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A TABLE

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# A TABLE of the general Heads contain'd in the Firſt Part of this TREATISE.

Aſſignments, Page 1
Bargain and Sale, 14
Conditions and Limitations, 25
Confirmation, 43
Covenants in general, 46
Covenants to levy a Fine, 63
Covenants to ſuffer a Recovery, 67
Covenant that he is ſeiſed of a good Eſtate in Fee-ſimple, and that it is free from Incumbrances, 70
Covenant to make ſuch Aſſurance as ſhall be reaſonably deviſed, or as Counſel ſhall adviſe, 74
Covenants in Leaſes, 84
Deviſes, 102
Diſſeiſin, 119
Entry, 131
Exception, 140
Exchange, 144
Expoſition of Words uſed in Conveyances, 147
Expoſition of Deeds (Rules for the) 161
Expoſition of Wills (Rules for the) 168
Feoffments, 172
Fines, 190
Grants, 212
*Habendum*, 224
Jointreſs, 230
Leaſe and Releaſe, 236
Recoveries, 243
Releaſe, 255
Remainders, 262
Rents, 277
Reverſion, 271
Revocation, 285
Surrender, 290
Tenant for Life, 297
Tenant at Sufferance, 307
Tenant at Will, 309
Tenant for Years, 314
Uſes, 338

# A TABLE of the general Heads contain'd in the Chancery Caſes.

| | |
|---|---|
| | *Page* |
| AGreements, | 369 |
| Aſſignments, | 372 |
| Bargain and Sale, | 375 |
| Bonds, | 377 |
| Conditions, | 381 |
| Covenants, | 386 |
| Deeds and Conveyances in general, | 388 |
| Deeds fraudulent, | 391 |
| Eſtates in Fee-ſimple and Fee-tail, | 395 |
| Feoffments, | 399 |
| Fines, | *ibid.* |
| Grants, | 403 |
| Jointures and Settlements, | 404 |
| Leaſes, | 410 |
| Mortgages and other Securities, | 415 |
| Mortgages Redeem'd in Equity, | 420 |
| Mortgages Uſurious, | 424 |
| Perpetuities, | 425 |
| Recoveries, | 430 |
| Releaſes, | 432 |
| Remainders, | 434 |
| Rents, | 437 |
| Revocations, | 440 |
| Surrenders, | 459 |
| Truſts, | 462 |
| Uſes, | 470 |
| Wills, | 473 |

BRITISH MUSEUM 28 FEB 47

# A TABLE OF *The Principal Matters* Contained in the First Part of the enſuing Treatiſe.

*Abatement.*

WHAT an Abatement is, *Page* 173

*Acceptance.* See **Rent.**

Leſſor has Election either againſt Leſſee or Aſſignee, but Acceptance of the Rent of the Aſſignee determines his Election, 9

Yet he may have an Action of Covenant after Acceptance, *ibid.*

Acceptance of Rent is ſufficient Notice of the Aſſignment, *ibid.*

Acceptance of Rent of the Aſſignee diſcharges the Executor, 10

No Acceptance of Rent of the Aſſignee diſcharges the Leſſee of his Covenant to repair, *ib.*

A Horſe, or other Thing, may be paid in Satiſfaction of the Mortgage-Money, if the Party will accept it ſo, 32

If the Money is to be paid to a Stranger, Acceptance of a Horſe by him is no Performance of the Condition, *ibid.*

Where Acceptance of the Rent ſhall make the Leaſe have Continuance, and where not, *Page* 33

Where a Leaſe for Years concludes that the Leaſe ſhall be void, Acceptance of Rent cannot make it good, 99

But in a Leaſe for Life, which cannot be avoided before Entry, Acceptance of Rent bars the Re-entry, *ibid.*

Acceptance of Rent demanded, affirms the Leaſe for Life, 100

If a Parſon, *&c.* leaſes, rendring Rent, and dies, though the Succeſſor accepts the Rent, it is void, 99

But if a Biſhop leaſe for Years and die, if the Succeſſor accepts the Rent he ſhall never avoid it; 100

Acceptance of a voidable Leaſe is a Surrender of a good Leaſe, 292

So likewiſe is the Acceptance of a void Leaſe, *ibid.*

Acceptance of a new Leaſe of Part, is a Surrender of that Part only, *ibid.*

# *The* TABLE *to the First Part.*

*Addition.* See **Miſnomer.**

A Feoffment to *J. S.* Knight, who is not a Knight; yet good, and why, *Page* 188
Where an Addition ſhall not hurt, 215
Where the Addition of a Thing that is falſe ſhall not prejudice the Grant, 219

*Agreement.*

All Agreements muſt be according to the ſubject Matter, and be govern'd by the Parties Intentions, not to work a Wrong, 58
Wherever there is an Agreement under Hand and Seal, Covenant lies, *ibid.*
A Man's Agreement to pay, if he be Party to a Deed, amounts to a Covenant. *ibid.*
Whoever holds by Agreement from me, is my Tenant at Will, and I have the Eſtate. 124
The Intent is the chief Thing to be conſidered in all Agreements, 164
Whether where a Deed of Surrender is made to one in his Abſence, and without his Knowledge, an Agreement be not intended; and whether the Law will not ſuppoſe an Aſſent till his Diſagreement appears, 291

*Apportionment.*

What an Apportionment is, 322
How to be made, *ibid.*
A Condition may be apportion'd by Act in Law, 4
So likewiſe may a Rent; and how, *ibid.*
Where there ſhall be an Apportionment of Rent, and where not, 278
A Rent-charge cannot be apportion'd, and why, *ibid.*
And yet the Rent reſerved upon a Leaſe for Years may be apportion'd, 322
Where the Leſſee re-demiſes to the Leſſor at a Rent, there ſhall be no Apportionment, *ibid.*
But where no Rent is reſerved there ſhall, *ibid.*
Where the Leſſor comes under the Benefit of a Stranger's Contract, there ſhall be no Apportionment, *ibid.*

*Aſſets.*

Executors ſhall be charged with their Teſtator's Contracts as long as they have Aſſets, 10
And the Action is not local, *Page* 10
If an Executor have Aſſets, he cannot waive his Term, though of half Value, 11
A Remainder or Reverſion expectant upon an Eſtate-tail is no Aſſets to the Heir, in Debt upon his Father's Bond, 270

*Aſſignee.*

Who is an Aſſignee, 1
Bargainee by Deed inrolled is an Aſſignee within the Statute of 32 *H.* 8. of Aſſignments, 2
A Reverſion is granted to the Uſe of *A.* and his Heirs, *A.* is an Aſſignee, *ibid.*
Covenant for Repairs lies againſt an Aſſignee, though the Word *Aſſignee* be not in the Leaſe. 3
Of what Forfeitures of Conditions Aſſignees may take Advantage, and of what not, 4
Debt lies for the Moiety of the Rent againſt Aſſignee of the Moiety. *ibid.*
Covenant lies againſt an Aſſignee of Parcel, *ibid.*
Aſſignee is not bound by a Covenant in a Leaſe of Goods, 6
Aſſignee of Leſſee not bound by a Covenant to do a collateral Act, *ibid.*
Nor by a Covenant broke before Aſſignment, *ibid.*
Aſſignee is bound by Covenant of Leſſee, for him and his Aſſigns, to do a new Thing on the Land, *ibid.*
Aſſignee, and the Executor of an Aſſignee, and the Aſſignee of an Executor, may have Covenant, 7
Aſſignee of a Term may have Remedy againſt the Aſſignee of the Reverſion, *ibid.*
Covenant lies not againſt an Aſſignee for a Breach of the Aſſignor, *ibid.*
Aſſignee may take Benefit of a Covenant in Law, *ibid.*
Aſſignee is Debtor in Reſpect of the Land, 8
Aſſignee of Leſſor may have Covenant for Rent, *ibid.*
Aſſignee of an Executor of the Leſſee pleads to an Action of Debt, that before any Rent due he aſſign'd to *J. S.* and gave Notice to Leſſor. *Repl.* That the Aſſignment was by Fraud: And *Judic. pro Quer.* 11
Of what Forfeitures, by Force of a Condition, Aſſignee ſhall take Advantage. 34

# *The* TABLE *to the Firſt Part.*

A Perſonal Contract cannot oblige an Aſſignee, *Page* 57

Aſſignee of a Grant of Lands may bring Covenant for farther Aſſurance, 61

If a Rent be reſerved to him and his Aſſigns, it ſhall determine by his Death; unleſs the Words *during the Term* be in the Leaſe, 320

*A.* Tenant in Fee, leaſes for Years to *B.* his Executors, Adminiſtrators and *Aſſigns during the Term*: The Leſſor deviſed the Reverſion, and the Deviſee brought Covenant for Non-payment of the Rent, and recover'd the Rent as Aſſignee, *ibid.*

### Aſſignment.

What an Aſſignment is, 1

A Term for Years muſt be aſſigned on the Land, *ibid.*

It muſt be by Deed, *ibid.*

There needs no Conſideration in it, *ibid.*

Aſſignment of a Choſe in Action, is, in Equity, a Breach of Covenant, 7

A Choſe in Action is not aſſignable, *ibid.*

Acceptance of Rent is ſufficient Notice of an Aſſignment, 10

No Eſtate paſſes by Aſſignment of Commiſſioners of Bankrupt, unleſs inrolled, 16

Aſſignment of a Right, which is not aſſignable before Poſſeſſion is regained by Re-entry or Ejectment, is void. 189

### *Attorney.*

An Attorney muſt not make a Leaſe in his own Name, 55

How a Leaſe by Attorney is to be made, 336

Covenant by an Attorney for quiet Enjoyment, amounts to a Leaſe, 55, 93

An Attorney muſt covenant in the Name of the Party for whom he acts, not in his own Name, *ibid.*

An Attorney muſt always purſue his Warrant, 185

Form of a Letter of Attorney to enter and take Poſſeſſion, 136

Form of a Warrant of Attorney in an Indenture, to make or take Livery and Seiſin, 187

### *Attornment.*

Leſſee for Years grants Part of his Term, and after bargains and ſells the Reverſion: It veſts not in the Grantee without Attornment, *Page* 3

But if Grantee, ſeiſed in Fee, in Conſideration of Money, bargains and ſells for Years, there needs no Attornment; for the Statute of Uſes veſts the Poſſeſſion, *ibid.*

Grantee of a Reverſion cannot take Advantage of a Condition without Attornment, 4

But Uſes veſt by the Statute, without Attornment, 5

Leſſor, ſeiſed in Fee, grants the Reverſion for Years; it is good without Attornment, 13

If Leſſee for Years leaſes Part of the Term, and after bargains and ſells the Reverſion of it to another, without Attornment, the Grantee can neither diſtrain nor bring Debt for the Rent, 12

When and where there ought to be Attornment, 213

Now there needs no Attornment, and why, *ibid.*

Attornments are taken away by the Statute of 4 & 5 *Ann.* *ibid.*

But Notice muſt be given to the Tenant, 213, 272

Where an Action of Waſte doth not lie, nor is there any Attendance, there needs no Attornment to paſs a Reverſion, *ibid.*

### *Averment.*

Collateral Averments are not admitted in Caſe of a Will, 103

### *Bankrupt.*

No Eſtate paſſes by an Aſſignment of Commiſſioners of Bankrupts, unleſs it be inrolled, 16

### Bargain and Sale.

What is a Bargain and Sale, 14

Why it was thought few Lands would be paſſed by Bargain and Sale, *ibid.*

Bargainor muſt be in actual Poſſeſſion, or enter, and ſeal and deliver the Deed upon the Land, *ibid.*

If

# *The* TABLE *to the Firſt Part.*

If there be a Bargain and Sale, and a Fine and Feoffment of the ſame Lands, the Bargainee ſhall be in by the Fine and Feoffment, *Page* 15

Bargain and Sale muſt be by Writing indented, *ibid.*

And inrolled in one of the Courts in *Weſtminſter*, in the County where the Lands lie, 16

A Bargain and Sale in Fee, with Livery, will paſs, and may be pleaded as a Grant, without Inrolment, *ibid.*

Though Bargainor or Bargainee die before Inrolment, yet the Bargain and Sale is good, *ibid.*

No Freehold, nor the Uſe thereof, will paſs by Bargain and Sale, unleſs by Indenture inrolled, *ibid.*

A Bargain and Sale is a real Contract, on a valuable Conſideration to paſs a Freehold in Poſſeſſion, Reverſion or Remainder, in Lands, *&c.* by Indenture inrolled within ſix Months, without Livery or Attornment, 17

If Bargainor be in Poſſeſſion, it is a ready Aſſurance, *ibid.*

But a Feoffment reſtores the Poſſeſſion to the Feoffor, tho' diſſeiſed, *ibid*

Bargain and Sale is good if inrolled on the Day of the Date; but ſurer if after the Date, 18

A Stranger's Releaſe is good to the Bargainee before Inrolment, *ibid.*

Bargainee may ſell before Inrolment, *ibid.*

Bargainee cannot vouch on any Warranty, 17

Bargainee has preſently ſo far Poſſeſſion, as to be a good Tenant to a *Præcipe*; and he may ſurrender, aſſign, alien, releaſe, *&c.* but cannot bring Treſpaſs till actual Entry, *ibid.*

A Bargain and Sale veſts the Uſes, and the Statute of Uſes the Poſſeſſion, *ibid.*

A Rent may be reſerved on a Bargain and Sale, *ibid.*

A Grant, Bargain and Sale, in Conſideration of Love and Affection, inrolled a Month after, not being in Conſideration of Money, ſhall not enure as a Bargain and Sale, but as a Covenant to ſtand ſeiſed to Uſes, 18

If Livery be made before Inrolment, it will make the Bargain and Sale a Feoffment, *ibid.*

A Deed made in Conſideration of Money, with Letter of Attorney for Livery, Inrolment makes it a Bargain and Sale. *ibid.*

A Grant, Bargain and Sale, in Conſideration of Money, with Letter of Attorney for Livery; if Livery be made before Inrolment, it ſhall paſs by Livery, *Page* 19

A Bargain and Sale may be inrolled after either Party's Death, *ibid.*

A Bargain and Sale to *A.* another to *B.* if the Deed to *A.* is not inrolled, the Deed to *B.* is good: But if the Deed to *A.* be inrolled within ſix Months, the Deed to *B.* is void, *ibid.*

If Bargainor and Bargainee grant a Rent-Charge; after Inrolment it is the Grant of the Bargainee, and Confirmation of the Bargainor, *ibid.*

The Form of a Deed of Bargain and Sale, 19, 20, 21, 22

Bargain and Sale, mention'd in Conſideration of Money, tho' not paid, is good, 19

The Words *Bargain and Sell* are not neceſſary; but other Words may be uſed, 21

What Words are held to be good in a Bargain and Sale, *ibid.*

How it was in Caſe of a Bargain and Sale, at Common Law, before the Statute of 27 *H.* 8. *cap.* 10. *ibid.*

A Bargain and Sale paſſes the Freehold of Seigniories, Lands, Rents, *&c.* Reverſions and Remainders, 22

A Bargain and Sale cannot be to one to the Uſe of another, 23

On ſuch a Bargain and Sale for Money, the Uſes to others are void. *ibid.*

A Bargain and Sale for Money paſſes a Fee, at the Common Law, without the Word *Heirs*, 24

Eſtovers and Things *de novo* cannot be granted by Bargain and Sale, *ibid.*

Bargainee by Deed inrolled is an Aſſignee within the Statute 32 *H.* 8. 2

But cannot enter for Condition broken, without Notice of the Bargain and Sale, *ibid.*

In a Bargain and Sale the Statute of Uſes executes the Poſſeſſion of the Reverſion without Attornment, 5

Where a Bargain and Sale puts the Bargainee into Poſſeſſion ſo that he may releaſe, 134

A Bargain and Sale made off the Land, will not make a Claim and paſs a Remainder, *ibid.*

How the Words *Bargain and Sell* come to be put into Leaſes for a Year, 164

A Father, in Conſideration of Love, bargains and ſells without Conſideration of Money, and the Deed is inrolled: The Son being in Poſſeſſion, it ſhall be good as a Confirmation, not for any other Conveyance, 190

By Bargain and Sale of the Reverſion, Remainder, Rents, Iſſues and Profits, *&c.* the Bargainee is poſſeſſed by the Statute of Uſes, of a Term, without Attornment, and may diſtrain and have Debt, *Page* 138

Bargain and Sale for Years is good without Inrolment, *ibid.*

If a Leaſe for Years be made by Way of Bargain and Sale, in Conſideration of Money, the Tenant is in Poſſeſſion upon the Sealing of the Deed, to all Intents and Purpoſes, except to the bringing of Treſpaſs, 314

In a Bargain and Sale for Money, the Law makes an expreſs Uſe to the Bargainee, and no other Uſe can be appointed, 347

Tenant in Fee bargains and ſells for Money; he is ſeiſed to the Uſe of the Bargainee, *ibid.*

A Bargain and Sale is when a Recompence is given to both Parties, *ibid.*

*A.* for Money bargains and ſells to *B.* to the Uſe of *A.* for Life, and *B.* in Tail, and after of *A.* in Fee; this is void, and why, 357

A Deed of Bargain and Sale, 19

Manner of inrolling it in the King's Bench, 23

Manner of Inrolment of it, when it is acknowledged before a Judge, 24

*Baron and Feme.* See **Jointreſs.**

Upon the Grant of a Reverſion to Baron and Feme, the Baron only may bring Covenant, 62

It is a general Rule, that the Baron only may bring the Action for that which he can diſcharge without his Wife, *ibid.*

Feme has a Leaſe for Years as Executrix, the Husband may ſell it, 94

A Feme Covert cannot make a Will but of Goods, as Executrix, or of a Choſe in Action, 116

And that muſt be with the Husband's Conſent, *ibid.*

Baron and Feme, Tenants in ſpecial Tail, the Baron may levy a Fine, and bar the Eſtate-tail, 194

And tho' the Feme has an Eſtate ſhe cannot bar it, *ibid.*

Fine by Feme Covert bars her and her Heirs, if not avoided by the Husband's Entry, 194

All Alienations made by the Wife of the Husband's Lands are void, 230

Baron, Tenant for Life, Remainder to his Wife in Tail, Remainder to Baron in Fee: Baron and Feme make a Feoffment, and after levy a Fine to the Feoffee, it is no Forfeiture, *Page* 232

A Leaſe to Baron and Feme for their Lives, Remainder to the Executors of the Survivor. The Baron grants away the Term and dies; this ſhall not bar the Wife who had but a Poſſibility, and no Inteteſt, 306

A Feme Covert may have a Tenant at Will, and be Tenant at Will, but cannot countermand it, 311

A Woman leaſes at Will, and marries; this is no Countermand of the Leaſe, *ibid.*

So it is alſo where a Leaſe is made to a Woman who marries, *ibid.*

The Husband may, during his Life, diſpoſe of his Wife's Term; and if he ſurvives her he has it: But if his Wife ſurvives, and he makes no Diſpoſition of it, it remains to her, 321

The Baron made a Leaſe of his Wife's Eſtate, to commence after his Death, he died and his Wife ſurvived; it was held a good Leaſe, *ibid.*

The Husband cannot, by his Will, diſpoſe of his Wife's Term, *ibid.*

The Baron, being poſſeſſed of a Term in Right of his Wife for forty Years, makes a Leaſe for twenty Years; the Wife ſhall have the remaining twenty Years, *ibid.*

Where, when Baron and Feme join in a Leaſe of the Wife's Lands, it ſhall be good againſt the Heirs of the Wife, *ibid.*

A Man cannot give an Eſtate to his Wife by a Deed, but may covenant to ſtand ſeiſed to her Uſe, 156

*Bond.*

A Bond to perform a void Covenant, is a void Bond, 54

A Bond to perform all Covenants in an Indenture, wherein is a Covenant that he was rightful Owner, and he was not, yet the Condition of the Bond is not broken, 57

If the Condition of a Bond be, That a Stranger ſhall do an Act for the Benefit of the Obligor, and the Performance ſaves his Bond, he muſt get it performed at his Peril, 59

Where a Condition of a Bond is of two Parts in the Disjunctive, and both poſſible, and after one becomes impoſſible by the Act of God, the Obligor is not bound to perform the other, *Page* 60

Bond to enfeoff one of the Manor of *D.* before ſuch a Day; if he enfeoffs another before that Time, the Bond is forfeited though he re-purchaſes the Land, 76

Bond to make a ſure Eſtate by the Advice of *J. D.* If he makes the Eſtate to him according to his Advice, be it ſure, or not, he ſaves his Bond, 77

A Bond to perform Covenants is as much broke on a Breach of a Covenant in Law, as of an expreſs Covenant, 100

*Choſe in Action.*

A Choſe in Action is not aſſignable, 7

An Aſſignment of a Choſe in Action is, in Equity, a Breach of Covenant, *ibid.* and 57

Choſes in Action are not grantable over, 222

*Claim and Non-claim.* See **Fine.**

A Claim of Rent muſt be made upon the Land, 134

A Bargain and Sale made off from the Land will not make a Claim and paſs a Remainder, *ibid.*

Where Leſſee for Years levies a Fine, Leſſor ſhall have five Years after the Term to make his Claim and enter, 198

No Claim or Entry of any Eſtate to avoid a Fine, 200

Unleſs the Action is begun and proſecuted within a Year after ſuch Entry or Claim, *ibid.*

If the Feoffee of Tenant in Tail levy a Fine, the Iſſue in Tail has five Years to claim after his Father's Death, *ibid.*

But if a Fine be levied by the Diſſeiſor of a Tenant in Tail, five Years Non-claim, after, bars the Iſſue in Tail, *ibid.*

An Infant, Feme Covert, *&c.* have five Years to claim after the Impediments removed, 201

A Fine and Non-claim ſhall not bar him in Remainder from bringing Error to reverſe it, *ibid.*

A Fine and Non-claim binds not the Eſtate, but the Right, *ibid.*

And if the Eſtate be not turned to a Right, there needs no Claim, *ibid.*

A Fine and Non-claim bars no future Intereſt till five Years after it begins, *Page* 202

A Right to an Eſtate extended, and a Term, are barred by Fine and Non-claim, *ibid.*

If a Man purchaſe a Term in Truſt for himſelf, and after the Inheritance, and ſells the Lands, five Years Non-claim ſhall bar the Term, *ibid.*

But if agreed to be aſſigned to a Conuſee, it will not bar it, *ibid.*

Fine levied by Mortgagor in Poſſeſſion and Non-claim for five Years, will not bar the Mortgagee, *ibid.*

Leſſor ſhall have five Years after the Expiration of the Leaſe, on a Fine levied by Leſſee for Years or Life, *ibid.*

**Condition and Limitation.**

What the Nature of a Condition is, 25

What a Condition doth, and what a Limitation, *ibid.*

Where an Eſtate deviſed upon Condition ſhall be conſtrued as a Limitation, and why, 23

Where it is a Condition, and where a Limitation, *ibid.*

Conditions are always taken ſtrictly, and ought to be truly performed, *ibid.*

A Condition cannot be reſerved but on the Part of the Feoffor, Donor or Leſſor, *ibid.*

How a Condition is to be conſtrued when created in a Deed, 26

The four Incidents which a Condition to create an Eſtate ought to have, *ibid.*

Eſtates upon Condition, are either upon Condition in Deed, or Condition in Law, *ibid.*

What is a Condition in Deed, *ibid.*

Demand of Rent on Conditions, and how made, *ibid.*

When Profits ſhall be accounted Part of Satisfaction, and when not on a Condition of Re-entry, 28

Words that make Eſtates upon Condition, *ibid.*

Where Words of Condition amount to a Limitation, *ibid.*

*Provided always,* &c. *that the Leſſee ſhall not alien,* make both a Condition and Limitation, *ibid.*

*If it ſhall happen,* no Condition without Words of Entry, 29

*Si* makes a precedent Condition, *ibid.*

Where *Pro* makes a Condition precedent, and where ſubſequent, *Page* 29

The ſeveral Words of a Condition, *ibid.*

If a Condition annexed to Lands were poſſible at the making of the Condition, and is become impoſſible by the Act of God, yet the Eſtate of the Feoffee that paſſed by the Livery ſhall not be avoided, *ibid.*

All penal Conditions of Bonds are made in Favour of the Obligor, *ibid.*

If theſe Words, *And if he pay not at the Day, &c.* be not in, the Condition is void, 31

If no Time be limited in the Condition of a Bond for Payment of the Money, it is payable preſently, *ibid.*

Diverſity between a Condition which requires a Re-entry, and a Limitation which determines the Eſtate, 32

Diverſity where the Condition is for Payment of Money or Delivery of a Horſe, *ibid.*

Diverſity between a Condition annexed to a Leaſe for Years, and a Condition annexed to a Freehold, 33

A Bargain and Sale inrolled, upon Condition that if Bargainor pay the Money, the Eſtate ſhall ceaſe; he performs the Condition, yet the Eſtate is not reveſted till Entry, 34

No Condition ſhall bind which is not comprized in the Deed, 35

A Feoffment upon Condition, that the Feoffee ſhall not alien, is void, and why, *ibid.*

But not to alien to *J. S.* is good, *ibid.*

A Condition that Tenant in Tail or his Heirs ſhall not alien in Fee or Tail, is good, and why, 36

But to Baron and Feme in ſpecial Tail, upon Condition that the Baron ſhall not levy a Fine to bar his Iſſue, is void, *ibid.*

A Condition not to alien without Conſent; he deviſes it: Held an Alienation, *ibid.*

An unlawful Condition in a Feoffment may be good, but *ſecus* in a Bond, and why, *ibid.*

What is prohibited by a Statute may be prohibited by a Condition, *ibid.*

He that will take the Benefit of a Condition muſt perform it, *ibid.*

A Condition runs always with the Eſtate, 37

What is a precedent Condition, *ibid.*

Covenant that *in Conſideratione præmiſſorum* he would pay, *&c.* whether this be a precedent Condition, *ibid.*

Covenant to enjoy, paying Rent: Held that *Paying* is not a preceding Condition, *Page* 37

What are Eſtates upon Condition in Law, *ibid.*

That Tenant for Life ſhall not alien or commit a Forfeiture, is a Condition annexed in Law, *ibid.*

Infants are bound at Law by Conditions, 39

Liberty to cut down Trees, and carry them away, repairing the Fences, is not a Condition, but a Covenant, 40

Where the Word *Paying* is not a Condition, but a reciprocal Covenant, for which each Party may have his Action, *ibid.*

A Releaſe of a Condition for an Hour, is a Releaſe for ever, *ibid.*

A Deviſe of Land, *yielding and paying* 20 *s. per Annum*, held a Condition, *ibid.*

What will make a Condition in the King's Grant, 41

Leſſee covenants not to aſſign upon Pain of Forfeiture; this is a Condition, *ibid.*

Where a Condition gives the Leſſor Entry by Implication, *ibid.*

Deviſe to one of his two Daughters in Fee, to pay the other 20 *l.* this is a Condition, *ibid.*

A Condition or Limitation to reſtrain a Man from doing what is incident to his Eſtate, is void, *ibid.*

But a Gift in Tail, upon Condition not to alien in Fee, is good, 42

How it is when an Eſtate upon Condition is confirm'd, 47

Where a Condition may be extinguiſh'd by a Confirmation, and where not, *ibid.*

*A.* infeoffs *B.* to the Uſe of his Son, upon Condition: Before any broken, *A.* and the Son grant and confirm to *E.* a Rent for Life: The Conditions are afterwards broken: This being all in one Deed the Rent was never ſubject to the Condition, 48

But remained good, though by the Reentry of *A.* the Eſtate was reveſted. *ibid.*

Condition to perform Covenants, and to ſave harmleſs, muſt ſet forth the Deed in the Plea, and not plead Performance generally, 58

Where a Condition is of two Parts disjunctively, both poſſible, and after one becomes impoſſible by the Act of God, the Obligor is not bound to perform the other, 60

Where *in Conſideratione performationis inde* makes a Condition, and where not, 77

Leaſe

Leaſe rendring Rent, Proviſo that the Leſſee gather certain Rents, and pay them to Leſſor, is no Covenant, but a Condition, *Page* 93

Covenant by Leſſee, that if he, *&c.* alien his Term, the Leſſor may enter, is no Condition, but a Covenant, 94

Where a Condition is, That Leſſee, or his Aſſigns, ſhall not alien, if the Adminiſtrator grants over the Term, the Condition is broken, *ibid.*

How a Condition precedent ſhall take Effect, 215

The four Incidents for increaſing an Eſtate, by force of a Condition precedent, 215, 216

The Diverſity between Conditions that are Perſonal, and cannot be performed by any other, and Conditions that are not ſo inſeparably annexed to the Perſon, but that they may be performed by ſome other, 288

### Confirmation.

What a Confirmation is, 43

It may make a voidable or defeaſible Eſtate good; but it cannot work upon a void Eſtate, *ibid.*

It binds the Right of him who makes it, but alters not the Eſtate of him to whom made, *ibid.*

It cannot make an Eſtate, that is ſubject to a Condition, abſolute, *ibid.*

A Leaſe by a Biſhop, confirm'd by a ſucceeding Biſhop and Patron, good, *ibid.*

Confirmations are either expreſs or implied, *ibid.*

All actual Confirmations muſt be by Deed in Writing, *ibid.*

Every Confirmation is either *perficiens*, *creſcens*, or *diminuens*, *ibid.*

What is *Confirmatio perficiens*, *ibid.*

How it operates, *ibid.*

Where a Feoffee ſhall hold without a Condition, be the Confirmation made before or after it was broken, 44

*Confirmatio creſcens*, what it is, *ibid.*

What is *Confirmatio diminuens*, *ibid.*

Where a Confirmation enlarges an Eſtate, Privity is required, *ibid.*

What may be defeated by Entry may be made good by Confirmation, *ibid.*

The Form of a Deed of Confirmation, 44

It may be by Deed poll or Indenture, *ibid.*

It needs no Conſideration, *Page* 44

The Words *Dedi*, *conceſſi* & *confirmavi* are good, and work without Livery, *ibid.*

*Volo* that the Leſſee ſhall hold for his Life, adjudged a good Confirmation, *ibid.*

The Word *Demiſe* may amount to a Confirmation, 45

*To have and to hold*, and for what Eſtate, neceſſary in a Confirmation, *ibid.*

There needs no Execution but Signing, Sealing and Delivery, *ibid.*

A Confirmation to Tenant for Life, and his Heirs, how it muſt be to make a Fee, *ibid.*

A Confirmation cannot add a deſcendible Quality to one diſabled to take by Deſcent, *ibid.*

A Confirmation does not bar a Rent or Common out of Land, *ibid.*

A Confirmation may abridge the Tenants Services, but not enlarge them, 46

It ſhall not extinguiſh a Rent, *ibid.*

A Confirmation, rendring a new Thing, is void, *ibid.*

A Rent-charge for Life cannot be confirm'd in Fee, *ibid.*

But a Rent-charge in Fee, granted for Life, may be confirm'd in Fee, *ibid.*

Where a Confirmation is good, where a Releaſe is not, *ibid.*

Where a Confirmation is good, when a Releaſe is void, 47

What Acts are a Confirmation of a Leaſe, 46

Confirmation of a Leaſe of ſixty Years, for fifty Years only, *& non ultra*, is good for the ſixty, 47

Confirmation cannot be for a Time, *ibid.*

Where a Releaſe to Tenant for Life ſhall extend to him in Remainder, but a Confirmation ſhall extend only to Tenant for Life, *ibid.*

Two Jointenants; one confirms the Eſtate of the other; they are as they were before, *ibid.*

But if it be *Habendum* to him and his Heirs, he hath a ſole Eſtate, *ibid.*

Two join in a Deed, and one only hath the Intereſt, it enures by way of Confirmation, *ibid.*

How it is where an Eſtate upon Condition is confirm'd, *ibid.*

Where a Confirmation ſhall extinguiſh a Condition, and where not, *ibid.*

A Confirmation cannot enlarge what is determinable upon expreſs Condition, nor diſcharge

charge a Condition; but only to bind the Right of him who made it, in the Poſſeſſion of him to whom made, *Page* 48

Feoffee upon Condition makes a Feoffment over, the Feoffor confirms to him in Fee; this is a Confirmation *perficiens*, and makes no Tranſmutation of Eſtate, but corroborates it, *ibid.*

A Leaſe to *A.* at a Day to come, and alſo another to *A.* to commence at a Day to come; this is not a Surrender, but rather a Confirmation, *ibid.*

A Man, in Conſideration of Love to his Son, bargains, ſells and confirms to him; the Deed was inrolled: This ſhall not paſs by way of Uſe, but it ſhall by Confirmation, becauſe the Son was in Poſſeſſion, 48, 179

*Conſent.*

A Conſent to a Thing which is paſt ſignifies nothing, 39

If Leſſee be a Witneſs to the Deed, or to the Livery, it is good, for it ſhews his Conſent, 179

Whether, where a Deed of Surrender is made to him in Reverſion, in his Abſence and without his Knowledge, the Law will not ſuppoſe an Aſſent 'till his Diſagreement appears, 291

*Conſideration.*

A Deed in Conſideration of Love and Affection ſhall not enure as a Bargain and Sale, but as a Covenant to ſtand ſeiſed to Uſes, 18

The Father, in Conſideration of 100 *l.* paid by the Son, covenants to ſtand ſeiſed to the Uſe of the Son; and the Deed is not inrolled: Whether any Uſe ariſes to the Son, *ibid.*

Bargain and Sale mentioned in Conſideration of Money, tho' it be not paid, is good, 19

Formerly a Conſideration might be averred, tho' none was expreſſed, 20

No Conſideration but for Love and Affection will now raiſe an Uſe, *ibid.*

What will be a ſufficient Conſideration to change a Name, 22

No Conſideration required in a Deed of Confirmation, 44

One covenants to aſſure Land, and the other in Conſideration of the ſame Covenant performed, covenants to pay a Sum: He need not pay the Money till the Land is aſſured: But otherwiſe if in Conſideration of the Covenant to be performed, *Page* 77

Where *in Conſideratione performationis inde* makes a Condition, and where not, *ibid.*

Where the Law eſtabliſhes free Gifts without Conſideration, 164, 176

And where not, *ibid.*

What Conſideration muſt be to a Bargain and Sale, and what to a Covenant to ſtand ſeiſed, 177

Where, when Lands are convey'd without Conſideration, the Uſe ſhall be void, and the Lands return, *ibid.*

What Conſiderations are moſt valuable, *ibid.*

What Conſiderations will raiſe an Uſe upon a Covenant to ſtand ſeiſed, *ibid.*

*Divers good Conſiderations* will not raiſe an Uſe, *ibid.*

A Father in Conſideration of Love, bargains and ſells without Conſideration of Money, and the Deed is inrolled: The Son being in Poſſeſſion, it ſhall be good as a Confirmation, but not for any other Conveyance, 179

An Eſtate is ſettled in Conſideration of Money, and of a Marriage to be had; the Marriage is the Conſideration, 232

Reſervation of a Pepper-Corn is a good Conſideration to raiſe an Uſe, 237

Leaſe for Years without Conſideration, the Leſſee hath no Eſtate till Entry, *ibid.*

A Man covenants to ſtand ſeiſed to the Uſe of his Son, Remainder to *J. S.* a Stranger; no Uſe ariſes to *J. S.* becauſe there is no Conſideration, 264

No Conſideration but Blood and Marriage will raiſe an Uſe upon a Covenant, 351

A general Conſideration will not raiſe an Uſe by any Covenant or Proviſo, or Bargain and Sale, 347

Conſideration of Blood muſt be averred to raiſe an Uſe on a Covenant to ſtand ſeiſed, *ibid.*

There needs no Conſideration to raiſe an Uſe by Feoffment, Fine or Recovery, 345

On a good Conſideration Covenantor ſhall ſtand ſeiſed to an Uſe, 361

There muſt be a good Conſideration where there is no Tranſmutation of Poſſeſſion, 346, 351, 361

There muſt be a good Conſideration to raiſe an Uſe *de novo*, 348

Conſideration of Blood will raiſe an Uſe, *Page* 348

A Baſtard Son is not a ſufficient Conſideration, *ibid.*

Uſes raiſed in Conſideration of paternal Love, and a Proviſo to make Leaſes: Yet the Covenantor cannot make a Leaſe on a general Conſideration, *ibid.*

But if it be by Fine or Recovery he may, *ibid.*

*Contingency.*

If it be doubtful whether an Eſtate or Uſe limited *in futuro* ſhall veſt, it is a Contingency, 107

Difference between a Contingency and a Limitation of Eſtate in Poſſeſſion, 108

What is a contingent Remainder, *ibid.*

A Contingency limited on a Freehold is not an executory Deviſe, but a contingent Remainder, *ibid.*

No contingent executory Eſtate can be barred by Recovery, *ibid.*

There cannot be one Contingency upon another, 316

**Covenants in general.**

What a Covenant is, 49

Divers Sorts of Covenants, real and perſonal, inherent, collateral, *&c.* *ibid.*

Covenants are declaratory and obligatory; and the Difference between them, *ibid.*

Covenants ſhall be taken moſt ſtrongly againſt the Covenantors, *ibid.*

Where a Covenant may be with a Stranger to the Deed, and where not, 50

Covenants of the one Party are not the Covenants of the other, *ibid.*

The Word *Covenant* in an Indenture is the Word of both Parties, *ibid.*

A Man is obliged to pay ſo much at ſuch a Day; it is a Covenant, *ibid.*

If *A.* agrees to pay *B.* 100 *l.* for Lands, it is a mutual Covenant, *ibid.*

Covenant by Indenture Tripartite between three *& quemlibet eorum*, if one is damnified, they muſt join, *ibid.*

Covenant *conjunctim & diviſim* is joint or ſeveral, *ibid.*

In a Charter-party the Covenants are ſeveral and not joint, 51

*Conventum & agreatum* between the Parties makes a joint Covenant, *ibid.*

Where *Proviſum & agreatum* is not a Condition, but a Covenant, *Page* 51

The Covenant of Tenants in Common is ſeveral: *Contra* of Parceners and Jointenants, *ibid.*

A Releaſe of all Suits is no Releaſe of Covenants, *ibid.*

A Covenant is no Duty or Cauſe of Action till broken, *ibid.*

For Breach of reciprocal Covenants the Parties may ſue one another, *ibid.*

Reciprocal Covenants cannot be pleaded in Bar one of the other, *ibid.*

The Word *Between* makes the reciprocal Covenant, *ibid.*

Non-performance of a reciprocal Covenant is no Bar to another Covenant, *ibid.*

Covenant to ſerve me a Year, and I covenant to pay him 10 *l.* Tho' he ſerves me not, an Action lies for the 10 *l.* But otherwiſe if I covenant to give him 10 *l.* for his Service, *ibid.*

If Payment is to be made on Performance of a Matter precedent, the Performance muſt be alledged to maintain an Action for the Money, 52

*A.* covenants with *B.* to aſſure him Lands, and *B.* in Conſideration of the ſame to be perform'd, covenants to pay Money: He is not bound to pay it till the Covenant is perform'd, *ibid.*

Covenant to pay Money on the other's Covenant to do ſuch an Act, is a Promiſe againſt a Promiſe; and one may have his Action for the Money, and the other for the Breach of the Covenant, *ibid.*

In aſſigning a Breach upon mutual Promiſes it is not neceſſary to aſſign a Breach on the Plaintiff's Side, *ibid.*

Where Promiſes are diſtinct and mutual, each may have an Action againſt the other, 53

If the laſt Words in a Covenant are general, they ſhall be expounded by the firſt Words that are ſpecial, *ibid.*

A particular Covenant reſtrains a general one, *ibid.*

An expreſs Covenant qualifies a Covenant in Law, *ibid.*

*Yielding and Paying* is an expreſs Covenant, *ibid.*

Reſtraining Words in a Covenant govern the Whole, *ibid.*

A general Covenant is reſtrain'd by a particular expreſs Covenant, but not by an implied one, *ibid.*

If there be two particular Covenants, one may reſtrain the other, *Page* 53

If Covenants be coupled with an intire Sentence, the latter may explain the former, *ibid.*

Where an Exception is put laſt in a Covenant, it refers to all, *ibid.*

Notice need not be ſo ſtrictly given in an Action of Covenant, as in Caſe of a Bond, 54

A Covenant to perform a void Grant is a void Covenant, *ibid.*

A Covenant to do a Thing that is only *malum prohibitum*, is good; but not to do a Thing *malum in ſe*, *ibid.*

A late Covenant cannot be pleaded in Bar of a former, *ibid.*

Disjunctive Covenants muſt be pleaded to be ſpecially perform'd, *ibid.*

But in copulative and affirmative Covenants general Pleading is ſufficient, *ibid.*

If the Covenantor diſables himſelf to perform, an Action lies immediately, *ibid.*

Covenant which runs with the Land lies againſt an Aſſignee, or Executor, tho' not named, *ibid.*

And on an Exception Covenant goes with the Tenement, 55

Covenant in groſs ſhall not go to the Heir, *ibid.*

A Covenant to repair runs with the Land, and goes to the Heir, tho' not named, *ibid.*

Covenant to a Man, his Heirs and Aſſigns, yet the Executor may bring the Action, *ibid.*

The Word *Covenant* makes a Leaſe, tho' the Word *Grant* is omitted, *ibid.*

Covenant by an Attorney for quiet Enjoyment amounts to a Leaſe, *ibid.*

An implied Covenant lies not againſt an Executor, 56

The Words *Paying and Performing* make a Covenant, not a Condition, *ibid.*

To Covenants for Non-feaſance Defendant muſt plead that he hath not done, and to Covenants for Feaſance, Performance generally; but if the Covenant for Non-feaſance be void, he may plead Performance generally, *ibid.*

A Covenant to enjoy a void Leaſe, is void, but not ſo if the Leaſe be only voidable, *ibid.*

An implied Covenant in Law is void, if the Eſtate created be void, *ibid.*

A Grant of the Manor of *D.* and covenant that he hath good Right to grant, and he hath no Right, is a Breach of Covenant, *Page* 57

A Covenant to permit to enjoy without Moleſtation extends not to perſonal Torts, *ibid.*

A Covenant not to aſſign a Choſe in Action, an Aſſignment in Equity is a Breach, *ibid.*

Covenants muſt be taken with Reſpect to the whole Contents of the Deed, 58

The Word *Covenant* is not neceſſary to make a Covenant; but any Agreement under Hand and Seal is ſufficient, *ibid.*

A Man's Agreement to pay, if he be Party to a Deed, amounts to a Covenant, *ibid.*

If the Law creates a Duty, and the Party is diſabled to perform it without his Default, the Law will excuſe him from performing it; but if by Covenant he makes a Duty, he muſt perform it at his Peril, *ibid.*

A Grant for ninety-nine Years in Conſideration of 400 *l. Proviſo*, if he pay 20 *l. per Annum, &c.* the Grant to be void; this is an expreſs Covenant, 59

*That the Leſſee ſhall repair*, makes a Covenant, 61

A Covenant in Law ſhall go to the Aſſignee of the Term, *ibid.*

Where a negative Covenant can be ſaid to be perform'd, *ibid.*

Difference between a Covenant created by Law and an expreſs Covenant, 62

Where a Deed is void in the Frame of it, it ſhall amount to a Covenant to ſtand ſeiſed, 218

Covenant to do a Thing that is Parcel of the Demiſe, goes with the Land, 5

And ſhall bind the Aſſignee, tho' not expreſsly bound, *ibid.*

But a Covenant cannot be annexed to a Thing not *in eſſe* at the Time of the Demiſe, 6

Covenant by Leſſee to do a new Thing on the Land will bind his Aſſigns, *ibid.*

Covenant by Leſſee, for him and his Aſſigns, to do a collateral Act, does not bind an Aſſignee, *ibid.*

Covenant to repair binds the Leſſee, and all claiming under him, 7

Covenant to pay ſuch Legacies as his Wife had given by her Will: An Action of Covenant will lie for the Non-performance, 116

Covenant to repair Copyhold runs with the Land, 4

A Co-

# The TABLE to the First Part.

A Covenant to Uſes veſts without Attornment, *Page* 5

Every Covenant and Grant ſhall be taken moſt ſtrongly againſt the Makers, 164

On a Covenant to ſtand ſeiſed to Uſes, a Man may be both Donor and Donee, 357

A Covenant that after his Death his Heir ſhall ſtand ſeiſed to Uſes, is void, 359

The Father cannot covenant that his Son ſhall ſtand ſeiſed of the Lands whereof himſelf is ſeiſed, 360

*Action of Covenant.*

Action of Covenant for Rent lies not againſt an Aſſignee, who aſſign'd before the Rent due, 3

But it lies againſt the Leſſee upon his Covenant, *ibid.*

It lies againſt an Aſſignee of Parcel, 4, 7

It lies for an Aſſignee, and the Executor of an Aſſignee, and the Aſſignee of an Executor, 7

Covenant for Rent againſt Aſſignee of the Executor of Leſſee, who pleads Aſſignment over before Rent arrear, will not lie, *ibid.*

It lies not againſt an Aſſignee for Breach of the Aſſignor, *ibid.*

Where the Intent of the Parties can be collected, Covenant will lie, 49

Covenant lies for Leſſee, tho' he ſeals not the Leaſe, *ibid.*

Covenant lies on Default of Payment the firſt Day, but Debt lies not till the laſt, 50

Where Covenants are diſtinct and mutual, each may have Covenant againſt the other, 52

It lies for the Aſſignee of a Reverſion againſt the Leſſee for not leaving it in Repair, 54

A Covenant that runs with the Land lies againſt Aſſignee, though not named, 55

So againſt an Executor, *ibid.*

An Executor may bring Action on a Covenant to his Teſtator and his Heirs, for a Breach in the Teſtator's Life, *ibid.*

Covenant lies wherever there is an Agreement under Hand and Seal, 58

Leaſe ſealed by Leſſor and not by Leſſee, yet Covenant will lie againſt Leſſor, 59

Where a Man may bring Debt or Covenant at his Election, 60

Covenant on Warranty lies according as the Eviction is, *ibid.*

Where Covenant lies upon a Recital in a Deed, *Page* 61

An Aſſignee of a Grant of Lands may bring Covenant for farther Aſſurance, *ibid.*

Covenant lies againſt a Leſſee after Aſſignment, and Acceptance of Rent of the Aſſignee, *ibid.*

Covenant to convey Lands in which he had nothing; an Action of Covenant lies, 80

It lies upon the Word *Demiſe*, 84

**Covenant to levy a Fine.** See *Indenture*.

Where the Covenant is that *J. S.* a Stranger ſhall levy a Fine to the Covenantee, the Covenantee is bound to ſue out the Writ of Covenant, *Aliter* if I covenant with you that *J. S.* ſhall levy a Fine to *J. N.* 63

Refuſal to acknowledge a Fine on a *Dedimus* ſued out, is a Breach of Covenant, *ibid.*

Refuſal to acknowledge the Fine before a Judge at the Aſſiſes, is a Breach, 63

Writs of Covenant are ſued out after the Fine levied, *ibid.*

Defendant is not bound to levy a Fine in which are more Houſes or Lands than in the Covenant, 64

When the Words declare a Fine ſhall be levied, Covenant will lie, *ibid.*

Chancery will decree a Fine to be levied on the Words, *I do intend to levy a Fine to ſecure* 500 *l.* *ibid.*

Covenant to levy a Fine before the End of *Hillary* Term next, and the Deed bore Date in *Hillary* Term, but was intended to be dated before; and accordingly the Fine was levied before the End of that *Hillary* Term in which the Deed bore Date: Adjudged that the Fine was not levied to the Uſes in the Deed, 65

Covenant upon Marriage to levy a Fine to Uſes, and no Fine was levied; no Uſe ſhall ariſe, *ibid.*

Form of a Covenant to levy a Fine, 63

A Deed with Covenant to levy a Fine, 364

**Covenant to ſuffer a Recovery.**

The Form of it on a Leaſe and Releaſe, 67

The Declaration of the Uſes of the Recovery, 68

If there be any Tenant in Poſſeſſion that hath a Freehold in the Land, he muſt convey it

it to the Perſon who is to be Tenant to the *Præcipe*; for if ſuch Perſon have not the ſole Freehold, the whole Recovery will be void, *Page* 68

Form of a Recovery with treble Voucher, by Way of Leaſe and Releaſe, *ibid.*

Declarations of Uſes of Fines and Recoveries, made after levied or ſuffered, are good in Law, 69

Deed and Recovery but one Conveyance, *ibid.*

Recoveries by Tenants for Life, *&c.* by Covin, void, 68

## Covenant that he is ſeiſed in Fee, free from Incumbrances.

The Form of ſuch a Covenant, 70, 71

Covenant that he is ſeiſed in Fee, and hath good Right to ſell, are Synonymous, 70

Covenant that he is ſeiſed in Fee, that the Lands are of ſuch a Value, and that Covenantee ſhall enjoy freed from all Incumbrances, notwithſtanding any Act done by the Covenantor, how to be conſtrued, *ibid.* and 71

Covenant that the Lands are of ſuch a Value, *Notwithſtanding any Act*, *&c.* Breach aſſigned that the Lands are of leſs Value: Adjudged that the Covenant was not broken, and why, *ibid.*

Covenant to convey in Fee; the Covenantee ought to ſhew what Conveyance he would have, *ibid.*

Covenant that he is ſeiſed in Fee, hath good Right to ſell, and that there is no Reverſion in the Crown, for any Act done by him: Breach, that he was not ſeiſed in Fee: How the Words *For any Act done by him* ſhall be conſtrued, *ibid.*

A real Covenant runs with the Land, and binds the Heir; but a perſonal Covenant does not, 72

Covenant that the Indenture of Leaſe at the Time of the Aſſignment is a good Leaſe, and that the Plaintiff ſhall enjoy without the Let of the Defendant, or any claiming under him: Breach that the Leſſor had no Right to make the Leaſe: How to be conſtrued, *ibid.*

A Covenant to convey ſuch Lands as deſcended from his Father, (but doth not ſay *all* ſuch Lands) to the yearly Value of 40 *l.* how it ſhall be, *ibid.*

How it is where a good Eſtate in Fee is after defeated by Act of Parliament, *Page* 72

Covenant with the Teſtator, his Heirs and Aſſigns, the Executor, tho' not named, may bring Covenant, 73

Leſſee covenants with Leſſor, his Executors and Adminiſtrators, to repair; this runs with the Land, and the Heir, not the Executor, ſhall bring the Action, *ibid.*

Covenant by an Aſſignee againſt an Aſſignee: Breach, that a Stranger, *habens jus & titulum*, but ſays not what Right, entered: Naught, *ibid.*

Covenant that he is ſeiſed in Fee according to the Indentures made to him by one *W.* Breach, that he was not ſeiſed in Fee: Pleads, That he was ſeiſed of as good an Eſtate as *W.* convey'd to him. Held no Plea, *ibid.*

A Covenant ſhall not raiſe an Uſe, intended to be raiſed otherwiſe, 351

What Words will amount to a Covenant to ſtand ſeiſed, *ibid.*

How a Covenant to ſtand ſeiſed differs from a Covenant at Common Law, *ibid.*

A Covenant to ſtand ſeiſed operates to raiſe an Uſe; not to bring Covenant on it, 353

## Covenant to make ſuch Aſſurance as ſhall be reaſonably deviſed, or as Counſel ſhall adviſe.

In Covenants for reaſonable Aſſurance the uſual Covenants may be put in, 74

Covenant to convey in Fee: The Plaintiff muſt ſhew what Conveyance he will have, *ibid.*

Covenant to make ſuch Aſſurance as ſhall be reaſonable. The Aſſurance muſt not differ from the Bargain, *ibid.*

Covenant to make ſuch an Eſtate as ſhall be adviſed by the Plaintiff's Counſel: Plaintiff ſays his Counſel adviſed ſuch a Conveyance, that he gave the Defendant Notice thereof, and requeſted Performance. The Notice muſt be given to him to whom the Conveyance is to be made, who is to give Notice thereof to him who is to make it, *ibid.*

Covenant to ſeal ſuch Conveyance as Counſel ſhould adviſe; Covenantor muſt produce his Title to the Counſel, and give Notice thereof, 75

How Covenantor is to make the Aſſurance which he covenants to make at the Covenantee's Charge, *ibid.*

# *The* TABLE *to the Firſt Part.*

Defendant covenants to convey, by ſuch Conveyance as Counſel ſhall adviſe, his Lands in *B.* demiſed to *C.* The Plaintiff tenders Leaſe and Releaſe, with Covenants againſt a Stranger, and Warranty againſt the Defendant and his Heirs, of all his Lands in *B.* Therefore naught, *Page* 76

Covenant to make Aſſurance before ſuch a Day at the Covenantee's Charge: The Covenantor has Election what Aſſurance he will make, and the Covenantee is to provide the Coſts, *ibid.*

One covenants to aſſure Lands, and the other, in Conſideration of the ſame Covenant performed, covenants to pay a Sum: He need not pay the Money till the Land is aſſured. But otherwiſe in Conſideration of the Covenant to be performed, 77

Covenant that the Leaſe is indefeaſible, and to enjoy without Interruption of himſelf: The Covenant is only againſt himſelf and thoſe claiming under him, *ibid.*

Covenant to make an Aſſignment according to Agreement as Counſel ſhall adviſe; the Covenantor muſt aſſign accordingly: But if the Covenant be to make ſuch Conveyance as Counſel ſhall adviſe, Covenantee may chuſe, and his Counſel ſhall adviſe what is proper, *ibid.*

Covenant that he is ſeiſed in Fee, notwithſtanding any Act, *&c.* and that the Lands are of ſuch a yearly Value; *Notwithſtanding any Act, &c.* refers not to the ſecond Covenant, 78

Covenant that the Lands are of ſuch a yearly Value, and ſo ſhall continue, *Notwithſtanding any Act done or to be done by him:* The Words *Notwithſtanding, &c.* extend as well to the Time of the Covenant made, as to the future Time, *ibid.*

And though the Lands were not then of the Value, the Covenant is not broke by ſome Act done by him. *ibid.*

Covenant againſt Incumbrances, and that he had Power to ſell: Breach, That two Women were ſeiſed, and conveyed to the Defendant, who conveyed to the Plaintiff; and that one of them, at the Time of the Conveyance, was under Age. The Covenant is broken, *ibid.*

How to plead a Covenant for Enjoyment, 79

Covenant to enjoy without Moleſtation, the Word *Moleſtation* extends not to perſonal Torts, *ibid.*

That *J. S. habens legalem titulum* enter'd, this is not a ſufficient Breach, without ſhewing what Title, *Page* 79

Breach aſſigned that *A.* entered by Title, prior to the Title made by the Defendant, and though he ſays not what Title, yet the Covenant is broken, *ibid.*

A general Covenant to ſave harmleſs, *&c.* extends only to a lawful Interruption: But when it is ſpecial againſt ſuch a Man, it extends to any Interruption by him, *ibid.*

Covenant that the Plaintiff ſhould enjoy againſt *A.* and *B.* Breach that *A.* and *B.* having a prior Title entered: Defendant demurred; but adjudged to be good, *ibid.*

Form of a Covenant for farther Aſſurance, 79, 80, 81, 82

Covenant to aſſure on Requeſt: A Grant to another before Requeſt is a Breach, 79

Covenant to aſſign according to Agreement to the Plaintiff as Counſel ſhall adviſe, Defendant muſt make the Aſſignment to ſave his Covenant, 81

The farther Aſſurance is at the Charge of the Covenantee, if not mentioned at whoſe it ſhall be, 82

Covenantor is to do the firſt Act when he covenants to convey in Fee at his own Coſts, *ibid.*

If Vendor of a bad Title, with Covenant for farther Aſſurance, purchaſe a good Title, he ſhall make it over to the Vendee, *ibid.*

Covenant for farther Aſſurance as Counſel ſhall adviſe: The Bargainee, though learned in the Law, cannot deviſe the Aſſurance, but his Counſel muſt, *ibid.*

Covenant to make an Eſtate by the Advice of *A. B.* If he make it accordingly, he is excuſed of his Covenant, though the Title be not legal, 83

Deed to be made as Counſel ſhall adviſe, it muſt be the Counſel of him who is to have the Deed, *ibid.*

## Covenants in Leaſes.

All Covenants are either Covenants in Law, or expreſs Covenants, 84

An expreſs Covenant reſtrains a Covenant in Law, *ibid.*

So too does a Covenant in Fact. *ibid.*

By Covenant in Law upon the Word *Demiſe*, Leſſee ſhall enjoy againſt all tortious Entries, *ibid.*

# *The* TABLE *to the Firſt Part.*

Covenant lies upon the Word *Dimiſi*, if a Man demiſes without Title, though no Entry was on the Leſſee: But if it were a particular Covenant it will not lie without Entry and Execution, *Page* 84

On expreſs Covenant to enjoy againſt all Men, for any Act done by him, *&c.* Covenant lies not, unleſs the Leſſee be ouſted by eigne Title, *ibid.*

Leſſor covenants for quiet Enjoyment, if he illegally ouſt him, it is a Breach, *ibid.*

The Title of the Interrupter muſt be ſet forth, *ibid.*

Covenant to enjoy without *Moleſtation*: This Word extends to an Entry, not to perſonal Torts, 85

Covenant to enjoy againſt a particular Perſon, ſhall extend to his tortious Acts, *ibid.*

Covenant to enjoy binds not againſt wrongful Ejectors, unleſs particularly againſt *A.* or againſt all Strangers, *ibid.*

An expreſs Covenant binds againſt all wrongful Acts of Strangers, *ibid.*

Leaſe and Covenant by two, that there is no Incumbrance made by them; an Incumbrance by either is a Breach, *ibid.*

A Suit in Chancery is no Breach of Covenant for quiet Enjoyment, *ibid.*

Covenant to enjoy a void Leaſe is a void Covenant; but to enjoy a voidable Leaſe is good, till avoided, *ibid.*

Aſſignee of Part of a Term ſhall not have Covenant, *ibid.*

Covenant lies upon the Words, *That Leſſee ſhall do ſuch an Act*, 86

A Covenant with two jointly and ſeverally, is joint or ſeveral according to the Intereſt, *ibid.*

Where Merchants covenant ſeparately with the Owners of a Ship, it is ſeveral as to the Merchants, and joint as to the Owners, 86

Breach on Covenant for quiet Enjoyment, that a Stranger evicted him, without ſaying he had a Title, is naught. But *habens priorem & legalem titulum*, would be good, *ibid.*

Huſband purchaſes Lands to him and his Wife, for her Jointure; then leaſes and covenants to enjoy without Interruption of him, or any other by his Title: If the Wife ouſt the Leſſee, Covenant lies againſt the Huſband's Executors, *ibid.*

Leſſee covenants to leave the Land in as good Condition as demiſed, and cuts down Trees: Covenant lies not till the Term is ended; but Waſte will, *Page* 86

In Covenant upon a Warranty of Lands for Years, the Plaintiff ought to ſhew what Eſtate he who enter'd had at the Time of his Entry, 87

Leaſe of a Houſe and Eſtovers; Covenant lies if Leſſee deſtroys the Wood, *ibid.*

Uſe of a Thing demiſed, which falls to decay, ſo that Leſſee cannot uſe it. Covenant lies, *ibid.*

In Covenant for Repairs it is no Plea that the Houſe was burnt by Caſualty, *ibid.*

Leſſee covenants not to aſſign; he breaks the Covenant if he does aſſign, tho' Leſſor enter'd into Part before, *ibid.*

Covenant lies on a Covenant in Law againſt an Executor, *ibid.*

Covenant for Rent lies on the Words *Yielding and Paying*, againſt Executors, *ibid.*

Covenant that the Covenantee ſhall have ſuch Lands at ſuch a Rent, amounts to a Leaſe, *ibid.*

*Secus*, if Covenantor had nothing in the Land, 88

Covenant to give one Thing or another veſts the Property preſently, *ibid.*

If a Stranger who has no Title enters on the Leſſee, Covenant lies not againſt the Leſſor, *ibid.*

Where Tenant for Life is ouſted of all his Eſtate under the Leſſor's Title, he ſhall not have Covenant, but his Remedy is by *Warrantia Chartæ*, *ibid.*

Covenant that he hath not done any Act to diſturb the Plaintiff. That *A.* recovered Dower is no Breach. *ibid.*

Covenant that the Land is diſcharged of Incumbrances is broke by not paying of a Poſt-fine, *ibid.*

Covenant to repair, and Leſſor covenants to give Notice to repair within three Months: *Proviſo* for Non-performance of Covenants, Leaſe to be void. The ſecond Covenant qualifies the firſt, but the *Proviſo* ſeparates them, *ibid.*

Covenant that Leſſor, after four Years, may come to ſee if any Waſte. He may view the Premiſſes when he pleaſeth, 89

If the Grant be good, all ſubſequent Qualifications reſtrain a Covenant in Law, *ibid.*

Covenant after Leſſor has repair'd, Leſſee will keep it ſo, is conditional, *ibid.*

They are mutual Covenants, *ibid.*

Covenant on three Months Warning to repair, and leave it repair'd; the Clauſe to leave it repair'd, is diſtinct, and depends not on the other, *Page* 89

Covenant that Leſſee may take Houſeboot, *&c.* without committing Waſte, is vain, *ibid.*

Leaſe of a Farm, except one Cloſe, into which Leſſor enters. It is no Breach of Covenant, but a Treſpaſs, 90

Covenant to make a Leaſe of Land without ſaying for what Time, is not good, *ibid.*

Covenant to have Lands for ſixty Years after *A.*'s Death, is good, *ibid.*

Leaſe rendring Rent, *Proviſo* that the Leſſee gather certain Rents, and pay them to the Leſſor, is no Covenant, but a Condition, *ibid.*

Covenant by Leſſee to pay the Rent, amounts to a Reſervation, and ſhall go to the Heir, *ibid.*

A Covenant broken cannot be releaſed by Covenantee after Aſſignment, *ibid.*

Covenant lies for the Leſſor of the Aſſignee againſt the Leſſee after Aſſignment and Acceptance of Rent, *ibid.*

Covenant to hold the Land for twenty Years, amounts to a Leaſe; but to enjoy the Land for twenty Years, is only a Covenant, 91

Tho' the Words of an Indenture are the Words of a Leſſor only, yet Leſſee accepting it, it is a Covenant to both, *ibid.*

Covenant for quiet Enjoyment: If the Leſſor enters, the Leſſee may bring Treſpaſs, *ibid.*

Covenant to enjoy binds not againſt a wrongful Ejector, unleſs he be particularly expreſſed, *ibid.*

Covenant lies againſt Leſſor who had no Title, on the Word *Dimiſi*, tho' there have been no Entry on the Leſſee: But if it was a particular Covenant, it lies not without an Entry, *ibid.*

Covenant lies only for an Ouſter by a Stranger or older Title, or by the Leſſor himſelf, 92

When Leſſee covenants to repair, Plea that he kept the Premiſſes in repair, except a Kitchin, which was ſo ruinous that he rebuilt it, is a good Plea in Waſte, but not in Covenant, *ibid.*

Covenant to enjoy *ſine interruptione alicujus:* The Title of the Interrupter muſt be ſhewn, *ibid.*

A Covenant not conſiſting with the Recital ſhall not oblige, *Page* 92

Covenant in a ſecond Indenture may not be pleaded in Bar to a former, *ibid.*

Covenant lies on the Words *Reddendum*, *Conceſſi* or *Dimiſi*, 93

Words that make a reciprocal Covenant, tho' not a Condition, *ibid.*

The Diverſity where a Covenant is for quiet Enjoyment, general, and where ſpecial, *ibid.*

Covenant to build three Houſes and keep them in Repair; he builds four: The Covenant to repair extends to all, *ibid.*

Leaſe excepting the Trees, and Liberty to cut them down, and carry away, repairing the Hedges: Repairing the Hedges is not a Condition, but a Covenant, 94

Covenant to enjoy paying the Rent, is not a Condition, but a reciprocal Covenant, *ibid.*

Covenant that Leſſee may take Thorns by Aſſignment, he may take them without: Otherwiſe on Covenant not to take Thorns without Aſſignment, *ibid.*

Leaſe for Years, without Covenant to enjoy by Tenant for Life, who dies before the Term ends: On Entry of the Reverſioner, Covenant lies not on the Demiſe in Law, *ibid.*

Tenant for Life leaſes and covenants for Enjoyment: He afterwards commits a Forfeiture: He ſhall be bound by his Covenant, *ibid.*

A Parſon covenants that another ſhall enjoy his Lands for twenty-one Years, and after reſigns: He ſhall be bound by his Covenant, *ibid.*

Covenant to repair with a Penalty, Default of Repairs by Means of Thunder, Leſſee is excuſed of the Penalty, but muſt repair, 95

Every Covenant implies an Agreement, *ibid.*

Where a Covenant extends to a Thing *in eſſe*, Part of the Demiſe, it ſhall bind the Aſſignee: Otherwiſe where it extends to do a Thing not *in eſſe*, *ibid.*

But where Leſſee covenants for him and his Aſſignee to do a Thing on the Premiſſes, it ſhall bind his Aſſigns, *ibid.*

Tho' the Covenant is for the Leſſee and his Aſſigns, yet if the Things to be done be collateral to the Land, it ſhall not bind his Aſſignee, *ibid.*

A Covenant on the Demiſe of Sheep is a perſonal Contract, and ſhall not bind the Aſſignee, *Page* 96

If Leſſee covenant to repair, it ſhall be binding to all, whether they are in by Act in Law, or of the Party, *ibid.*

Aſſignee of Leſſee may have Covenant on the Words *Conceſſi*, or *Dimiſi*, *ibid.*

The Aſſignee of an Aſſignee, or Executor of an Aſſignee, or Aſſignee of an Executor, ſhall have Covenant, 97

Where the Covenantees are to have a ſeveral Intereſt or Eſtate, the Words *cum eorum quolibet*, make the Covenant ſeparate, *ibid.*

Leſſee covenants for himſelf and Executors to repair, (without the Word *Aſſigns*) Covenant will lie againſt his Aſſigns, *ibid.*

Recovery by Verdict, no Breach of a Covenant in Law for quiet Enjoyment, 100

Leſſee covenants to repair, and after builds a Barn: He muſt keep it in Repair, *ibid.*

A Parol Diſturbance is no Breach of Covenant, but a ſpecial Diſturbance muſt be ſhewn, 101

*Debt.*

DEBT lies for the Moiety of the Rent againſt the Aſſignee of the Moiety, 4

Where the Action of Debt for the Rent is to be laid, 8

Debt lies for Rent after the Eſtate is determin'd, 9

It lies not for the Grantee of the Reverſion againſt Aſſignee of Leſſee, *ibid.*

Nor againſt the Leſſee, *ibid.*

Where a Man may bring Debt or Covenant at his Election, 60

Debt lies upon any Covenant when the Sum is reducible to a Certainty, *ibid.*

An Action of Debt lies for the Arrears of Rent, as well againſt the Leſſee for Life as Leſſee for Years, 306

Debt lies againſt Tenant for Life for Rent, 327

*Deed.*

See *Delivery of Deeds.* **Expoſition of Deeds. Grant.**

A late Deed cannot take away the Effect of a former, 54

A Deed is always good againſt the Maker, and ſhall be taken moſt ſtrongly againſt him, 173

Deed Poll of Feoffment, how to be made, *Page* 173

It muſt be written in Parchment or Paper, *ibid.*

The Seal is the moſt eſſential Part of a Deed Poll, 175

All Deeds muſt be pleaded with a *Profert in Cur'*, and upon *Oyer* of them the Suit muſt ſtay till they are produced, 259

*Delivery of Deeds.*

What paſſes by the Delivery of a Deed only, 178

What by Delivery on the Land by the Name of Seiſin, 179

What ſhall be a good Delivery, *ibid.*

A bare Delivery of the Feoffment upon the Land, makes but a Tenancy at Will, 180

Where the ſecond Delivery of the Deed upon the Land, is void, 181

Where the Day of the Delivery ſhall be incluſive, and where excluſive, 182

The Delivery of the Deed without Livery makes only a Tenancy at Will, 185

Where the ſecond Delivery of a Deed to recontinue the ſecond Poſſeſſion, is void, 186

The firſt Delivery makes it a Deed, *ibid.*

*Defeaſance.*

Deed of Defeaſance, how and of what Things made, 30

Of Eſtates of Inheritance executed by Livery and executory Inheritances, Leaſes, Obligations, Conditions, *&c.* 31

Difference between a Defeaſance and a Condition, 30

*Demand.* See **Rent.**

If Rent be behind, the Feoffor cannot enter without a Demand, 26

Where the Demand muſt be made, *ibid.*

Where when the Rent is made payable off the Ground, 27

Where Rent need not be demanded, *ibid.*

Where he in Reverſion muſt demand it, and the Leſſor ought to tender it, *ibid.*

The Leſſor need not demand it when payable off the Land, *ibid.*

When to be demanded, if payable at a certain Feaſt, or ten Days after, *ibid.*

How, and in what Words to make the Demand, *Page* 27

What muſt be done after the Demand, *ibid.*

Without an actual Demand a Leaſe for Years ſhall not be void for Non-payment of Rent, 33

Demand of a Rent-ſeck muſt be made on the Land, 119

Demand of Rent muſt be made at the Houſe where the Rent is iſſuing, and not where payable, 120

A Demand may be at any Time after the Day of Payment, *ibid.*

Where a Rent-charge is to be demanded, 137

A Diſtreſs is a Demand, *ibid.*

Where a Demand muſt be made for a Penalty or Re-entry, *ibid.*

Where a Demand to be made before a Diſtreſs, *ibid.*

The ſeveral Things to be obſerved in Caſe of a Demand of Rent, *ibid.*

Tho' the Words are, *That the Leaſe ſhall be void*, it ſhall not be void without a Demand and Re-entry, *ibid.*

How the Demand to be when the Rent is made payable off the Land, 138

The Words of the Demand of Rent, *ibid.*

*Demiſe.* See *Leaſe, &c.*

If the Word *Demiſe*, for Conſideration of Money, be in a Leaſe, the Leſſee is in Poſſeſſion on the Sealing and Delivery of it, to all Intents whatſoever, except bringing of Treſpaſs, 315

## Deviſe.

See **Expoſition of Wills.**
See *Executory Deviſe.*

A Deviſe, what, 103

No Deed, but an Inſtrument to convey Lands, *ibid.*

A Man may deviſe his Eſtate at Pleaſure by Statute, *ibid.*

A Deviſe muſt be of Lands in Fee, not intailed, 103

Deviſee of Lands ſhall enter without Appointment, *ibid.*

Deviſee of Goods cannot take Poſſeſſion without Conſent of the Executor, *ibid.*

A Right to an Eſtate cannot be deviſed, *Page* 103

Deviſes muſt be governed by the Intent of the Deviſor, tho' not expreſſed by apt Words, *ibid.*

Deviſes and Uſes are favoured alike, *ibid.*

Conſtruction of Wills and Deviſes more favour'd than Deeds to fulfil the Teſtator's Intent, 104

A Diſcent cannot be directed by Deviſe againſt the Rules of Law, *ibid.*

Such Eſtates as cannot be convey'd by the Party, by Advice of Counſel, cannot be deviſed, *ibid.*

A Deviſe may be to the Uſe of another, *ibid.*

Difference when a Deviſe is paying ſo much Money, or doing ſuch an Act, *ibid.*

A Deviſe will lodge the Eſtate, though no Eſtate be limited, *ibid.*

The Words of a Deviſe to diſinherit an Heir, muſt be clear and not doubtful, *ibid.*

In all executory Deviſes the Lands deſcend until the Contingencies happen, 105

A Deviſe to the Heir, and if he die without Iſſue Male, then, &c. This is an Eſtate-Tail by Implication, *ibid.*

A Deviſe to his Wife, to be diſpoſed of by her to ſuch of his Children as ſhe ſhall think fit; ſhe hath only a nominating and directing Power, 106

When a Deviſor gives a diſpoſing Power, he gives the Deviſee the ſame Eſtate he had himſelf, though none be mentioned, *ibid.*

A Fee cannot be upon a Fee, except in Caſe of a future executory Deviſe, *ibid.*

A Deviſe with a Charge to the Deviſee is a Fee, though no Eſtate be mentioned, *ibid.*

A Deviſe to the Heir for Life, the Remainder in Contingency is good, 107

A Deviſe may be to one to the Uſe of another, *ibid.*

A Deviſe to his Son *A.* in Fee, and if he die without Heirs of his Body, then to another Son: This is an Eſtate-tail, *ibid.*

A Deviſe to his Son *T.* for ever, and if he die without Iſſue, living his Son *W.* then to *W.* This is a Fee in *T.* determinable; and *W.* has a Fee by executory Deviſe, if *T.* die before him without Iſſue, *ibid.*

An executory Eſtate muſt be limited on a Fee, and on a Condition, *ibid.*

A Remainder on a particular Eſtate is not executory, *ibid.*

# *The* TABLE *to the Firſt Part.*

A Deviſe to an Infant in *ventre ſa mere* is good, *Page* 109

A Deviſe by Leſſee for Years to *A.* for Life, Remainder to *B.* This is a contingent Poſſibility, which, if *A.* die during the Term, ſhall veſt, *ibid.*

A Deviſe of a Term to *A.* for Life: After the Death of *A.* it ſhall go to the Deviſor's Executors, *ibid.*

But to *A.* generally without ſaying for Life, it goes to the Deviſee's Executors, *ibid.*

Leſſee for Years on three Lives, deviſes to ſeveral ſucceſſively for Life, and the ſurviving Deviſee grants the Term, and dies: The Leſſee's Executors, not the Grantee's, ſhall have the Remainder of the Term, *ibid.*

Whether any, and what Bounds ſhall be put to the Deviſees of Terms, *ibid.*

A Deviſe to the right Heirs of *J. S.* who is living; whether good or not, *ibid.*

Deviſe to a Man for Life, Remainder to the Heirs of his Body, is an Eſtate-tail, 110

A Deviſe of Legacies to be paid out of Land, ſooner than they can be raiſed out of the Profits; the Deviſee ſhall have the Fee, *ibid.*

A Termor may deviſe for Life, Remainder to another, *ibid.*

Deviſe of Goods and Chattels; Deviſee cannot take them without the Executor's Aſſent, *ibid.*

Deviſe to a Son and the Heirs Male of his Body for 500 Years is but a Term, *ibid.*

And the Executor, not the Heir, ſhall have it, *ibid.*

If a Term is deviſed to a Man and the Heirs of his Body, a Remainder cannot be limited over, *ibid.*

Nor can there be any Appointment by executory Deviſe, *ibid.*

A Term deviſed for Life, Remainder to another: Aſſignment of the Reſidue of the Term in the Life of the firſt Deviſor is void, 111

Deviſe of a Term to one for Life, Remainder for Life, and ſo on to twenty *ſucceſſive*, is good, if all be *in eſſe* at the Time of the Deviſe, *ibid.*

But a Deviſe to one, not *in eſſe*, for Life, there can be no Limitation beyond it, *ibid.*

A Deviſe of all his Lands, Tenements and Hereditaments not before diſpoſed of; a Reverſion not diſpoſed of will paſs by it, *ibid.*

A Deviſe *imperpetuum* is a good Fee; but in a Deed it is but for Life, *ibid.*

A Grant to a Man and his Heirs Male is a Fee, for want of what Body: But by a Deviſe it is an Eſtate-tail, *Page* 111

A Deviſe in Tail Male; the Son of his Daughter cannot inherit, *ibid.*

How it is where a Man deviſes Lands for the Payments of his Debts, 112

Upon a Deviſe of Lands for the Payment of Debts, the perſonal Eſtate ſhall help to pay them, *ibid.*

Deviſe of Lands to two Executors to be ſold; one dies; the Survivor ſhall ſell, *ibid.*

Deviſe of Lands to be ſold for Payment of Debts, and ſays not who ſhall ſell: The Executors ſhall ſell, *ibid.*

A Deviſe to two Sons and their Heirs; if one die before the Deviſor, the other ſhall have all, *ibid.*

But if both die, their Heirs ſhall not take; 113

Deviſe to *A.* in Fee, who dies before the Deviſor; his Heir cannot take, *ibid.*

A Deviſe to two; one not *in eſſe*: The other takes all, *ibid.*

Deviſe to his Wife till his Iſſue come to eighteen, for bringing up the Child; the Child dies; yet ſhe ſhall have it for eighteen Years, *ibid.*

Deviſe to his Wife of the Profits of the Land, till his Child come of Age to educate it, is a Deviſe of the Land, 113

Deviſe of his Rents in *D.* to his Wife, is a Deviſe of the Land for her Life, *ibid.*

And a Chattel in her, *ibid.*

A Deviſe of Land to *A.* in Fee; and in another Clauſe a Deviſe of a third Part of the ſame Land to *B.* for Life, *B.* ſhall have an Eſtate in Poſſeſſion, and *A.* in Remainder, *ibid.*

A deſcendible Freehold may be deviſed, *ibid.*

A Deviſe to the eldeſt Son upon Condition; yet it is a Limitation, *ibid.*

In a Conveyance to Uſes there may be an Interpoſition of other Eſtates, and the Remainder ſtand good: But in a Will the Remainder ſettled muſt follow the Rule in Law, *ibid.*

Deviſe to *B.* for Life, Remainder to *C.* on Condition if ſhe marry without the Conſent of *E. F. &c.* then to *M.* in Fee; ſhe marries without Conſent; it is a Limitation and not a Condition, and her Marriage is a Forfeiture of the Eſtate, 114

# *The* TABLE *to the Firſt Part.*

A Deviſe that his Wife ſhall enjoy all his Land during her Life, if ſhe do not marry: But if ſhe marry, then that his Son *H.* ſhould enter and enjoy to him in Tail Male; Remainder to *R.* in Tail Male: Unleſs ſhe marries there is no Remainder in Tail; for that muſt commence on the Marriage, which never happening, it never veſts: But the Wife entered and died unmarried; ſhe had an Eſtate for Life determinable; and it is no contingent Remainder, but an Eſtate veſted in *H.* in Tail, *Page* 114

Deviſe to two and their Heirs, equally to be divided; ſo far it is a Tenancy in Common in Fee: But if it had been added, *And if they die without Iſſue, &c.* it is an Eſtate in Tail, 115

And if one of theſe Deviſees die without Iſſue, the other has the whole in Tail by Way of croſs Remainder, *ibid.*

Where there are three Deviſees, the croſs Remainders are difficultly ſettled, *ibid.*

A Deviſe of all his Inheritance, or *totum ſtatum*, carries a Fee, *ibid.*

A Deviſe that *B.* ſhall be his Son's Tutor, the Lands follow the Cuſtody, 116

A Deviſe during his Son's Minority for his Education, is no Deviſe of the Guardianſhip, *ibid.*

Deviſe in Fee to his right Heirs is void; and the Heir is in by Deſcent, *ibid.*

*A.* deviſe that *B.* ſhall be his Heir: This conveys ſuch an Eſtate to *B.* as *A.* had, *ibid.*

Deviſe to his Iſſue (having Sons and Daughters) after his Wife's Death, is void. This has been denied, and held that the eldeſt Son ſhould be intitled, *ibid.*

What paſſes by the Deviſe of a Houſe *cum pertinentiis*, 117

By a Deviſe of all his Lands and Tenements, if the Deviſor had Lands in Fee, a Leaſe for Years will not paſs, *ibid.*

But if the Deviſor had no other Lands, it will, *ibid.*

Deviſe to the Heir Male of the Body of *J. B.* (now living) ſhall be his Heir apparent, *ibid.*

A Man makes his Will and deviſes Land; and after makes another, in which there is no Deviſe of Land; whether the firſt is revoked, *ibid.*

A Deviſe to his Executor of all his Goods and Mortgages, is a good Deviſe of the Lands mortgaged, *ibid.*

A Deviſe of Land to educate his Son, or pay ſuch a Sum with the Profits, is for Life: But to pay five Pounds is a Fee, *Page* 118

Diverſity between paying ſo much *per Annum*, and paying ſo much only, *ibid.*

If one enters before the Deviſee, and dies ſeiſed, this Deſcent ſhall not take away the Entry of the Deviſee, 195

A Fine levied, and five Years paſs before the Deviſee enters, it ſhall not hurt him, 196

A Deviſe may be to commence after the Death of another, 315

*Diſability.*

If the Law creates a Duty or Charge, and the Party is diſabled to perform it, without his Default, the Law will excuſe him: But if he makes a Duty by Covenant, he muſt perform it, 58

*Deſcent.* See *Diſſeiſin.*

There are two Sorts of Deſcents which toll the Entry of Diſſeiſees, 121

What is a Deſcent in Fee which takes away Entry, 122

A Dying ſeiſed is neceſſary to a Deſcent that takes away an Entry, *ibid.*

What is a Deſcent in Tail that takes away Entry, *ibid.*

A Deſcent of a Reverſion or Remainder tolls not Entry, *ibid.*

A Dying ſeiſed tolls not the Entry of an Infant, *ibid.*

A Deſcent caſt during Non-ſanity takes not away the Entry of the Heir, 123

He that dies without Iſſue before the Eſtate deſcends to him, need not be mentioned in a Formedon by a Siſter, but muſt by the Iſſue, 193

If one enters before the Deviſee, and levies a Fine and dies; this Deſcent ſhall not take away Entry, 195

*Diſcontinuance.* See **Fine.**

None but he to whom the Land is intailed can diſcontinue the Reverſion or Remainder, 194

What is a Diſcontinuance, 209

The five ſeveral Ways that Lands may be diſcontinued, *ibid.*

Inheritances that lie in Grant cannot be diſcontinued by Grant, *ibid.*

None can make a Diſcontinuance but he who is ſeiſed of the Freehold and Inheritance, *Page* 209

Tenant in Tail aliens in Fee by Bargain and Sale inrolled, and after Inrolment levies a Fine to the Bargainee: It is no Diſcontinuance, 210

But it is a Diſcontinuance if the Fine is levied before Inrolment, *ibid.*

**Diſſeiſin.**

What a Diſſeiſin is, 119, 128, 172

There muſt be an actual Ouſter of the Freehold to make a Diſſeiſin, 119

Jointenants and Tenants in Common cannot be diſſeiſed by their Companion without an actual Ouſter, *ibid.*

Diſſeiſor dying ſeiſed, takes not away the Entry of the Diſſeiſee, unleſs five Years quiet Poſſeſſion, *ibid.*

If the Tenant deny to pay, or is not on the Land ready to pay a Rent-ſeck, when demanded, it is a Diſſeiſin, *ibid.*

Two Cauſes of a Diſſeiſin of a Rent-ſeck, 120

Four Cauſes of Diſſeiſin of a Rent-charge, *ibid.*

Three Cauſes of Diſſeiſin of a Rent-Service, *ibid.*

A Feme Covert cannot be a Diſſeiſoreſs but by her actual Entry, *ibid.*

Dower aſſigned by a Diſſeiſor without Covin ſhall bind the Heir, *ibid.*

He who enters by Wrong, is a Diſſeiſor, *ibid.*

If a Diſſeiſor cut down Timber, Graſs or Corn, Diſſeiſee, on Re-entry, may have Treſpaſs againſt him and his Servants, 121

But if a Diſſeiſor make a Feoffment in Fee, Treſpaſs lies not againſt Feoffee, *ibid.*

If the Diſſeiſor is diſſeiſed, and the Diſſeiſee re-enters, the ſecond Diſſeiſor is puniſhable in Treſpaſs, *ibid.*

Diſſeiſee may, after Re entry, bring Trover for Corn, *&c.* *ibid.*

Leſſee for Years cannot be diſſeiſed, *ibid.*

There are two Sorts of Deſcent, which toll the Entry of a Diſſeiſee, *ibid.*

Feoffee of Diſſeiſee is out of the Statute of 32 *H.* 8. 122

If Diſſeiſee enfeoffs in Fee on Condition, and the Feoffee dies ſeiſed, the Diſſeiſee cannot enter: But if the Diſſeiſor enter for Covenant broken, Diſſeiſee may enter, 123

If the Leſſee is ouſted, and the Diſſeiſor dies ſeiſed, the Diſſeiſee cannot, but his Leſſee may, enter, *Page* 123

If Diſſeiſor leaſes for Life, and levies a Fine of the Reverſion, and five Years elapſe, Diſſeiſee cannot enter on Tenant for Life, 124

If Tenant at Will leaſes for Years, and the Leſſee enter, it is no Diſſeiſin but at the Election of the Tenant of the Freehold, *ibid.*

*A.* enfeoffs *B.* his Truſtee, who bargains and ſells for 100 Years: Leſſee enters, and *A.* continues Poſſeſſion and makes Leaſes, which expire, and dies: His Heir leaſes, and levies a Fine *ſur Conuſance, &c.* and five Years Non-claim: The Executor of the Leſſee for 100 Years, aſſigns off from the Land, and five Years Non-claim: The Fine is a Diſſeiſin, and diſplaces the Leaſe for 100 Years, which is barred by the Fine and Non-claim, 124, 125

But a Fine *ſur conceſſit* would have turned the Leaſe for 100 Years to a Right, 118

Leaſe for Years by Tenant at Sufferance or at Will, makes a Diſſeiſin, at Election, 125

If Leſſee enters and continues Poſſeſſion before his Term begins, it is a Diſſeiſin, 126

Tenant in Fee to continue the Eſtate in his Blood, leaſes for 500 Years in Truſt; and being ſo poſſeſſed covenants with others on the Conſideration in the Leaſe, to ſtand ſeiſed; and the Leaſe to be to the ſame Uſes; and levies a Fine, and five Years paſs, and dies; the Fine is no Bar to the Leaſe, *ibid.*

*A.* by Bargain and Sale mortgages to *B.* in Fee: *Proviſo* not to take Poſſeſſion till Default: Bargainee does not enter, and Bargainor lets the Land: Leſſee enter'd, paid his Rent, and ſurrender'd at the End of the Term; Bargainee deviſes the Mortgage to *J. S.* If the Bargainor's Leaſe was a Diſſeiſin, yet on the Re-entry the Diſſeiſin was purged, 127

If Feoffor after Feoffment enter, it is a Diſſeiſin, 128

If a Copyholder leaſe for Years contrary to Cuſtom, it is not a Diſſeiſin, *ibid.*

Where Tenant at Will grants a greater Eſtate than he can make, it is a Diſſeiſin, *ibid.*

Tenant for Life leaſes for Years, and after leaſes for Life, *Habend.* from *Michaelmas*, and Leſſee for Years attorns, and after levies a Fine to the ſecond Tenant for Life; and he in Remainder enter'd: The Leaſe for Life is void; ſo that the Attornment paſſed not the Reverſion; and the Leſſee for Years entring by the void Grant is a Diſſeiſor, *Page* 129

If Diſſeiſor enfeoff another, and afterwards the Right deſcends to him, yet he ſhall not enter, but on his Death his Heir may, 259

*Diſtreſs.* See **Rent.**

Diſtreſs for Rent muſt be in the Day, but for Damage-feaſant, either by Day or Night, 280

How Diſtreſſes for Rent ſhall be made and ſold, 313

The Leſſor may diſtrain or bring Debt at his Pleaſure, *ibid.*

How the Law was before the Statute of Diſtreſſes for Rent, 2 *W. & M. c.* 5. 323

When any Goods ſhall be diſtrained for Rent due upon a Demiſe, and the Tenant or Owner of the Goods ſhall not within five Days after Diſtreſs taken, and Notice thereof, and of the Cauſe of ſuch Taking, replevy the ſame; the Perſon diſtraining may, after Appraiſement, ſell the Goods for Payment of the Rent and Charges of the Diſtreſs, Appraiſement and Sale, leaving the Overplus in the Hands of the Sheriff, *&c.* for the Owner's Uſe, *ibid.*

Notice may be given either to the Tenant or Owner of the Goods, at the Landlord's Election, *ibid.*

When a Diſtreſs is taken in two contiguous Hundreds, it is but one Diſtreſs, and ought to be put into one Pound, *ibid.*

The Manner of making the Inventory of the Goods diſtrained, 324

Corn, Hay, *&c.* may be diſtrained, 325

Where to be left when diſtrained. *ibid.*

Not to be removed until replevied or ſold, *ibid.*

What Action lies on a Pound-breach or Reſcous of Goods diſtrained for Rent, 326

What Remedy is given to the Party injured, if no Rent be due upon ſuch Diſtreſs, *ibid.*

No Goods taken in Execution ſhall be carried off the Premiſſes, till the Landlord be paid his Rent not exceeding a Year, *ibid.*

And the Sheriff to levy the Rent as well as the Debt, 327

Where Goods may be diſtrained for Rent off of the Premiſſes, *ibid.*

No Diſtreſs ſhall be of Goods ſold *bona fide* before the Seiſure, *Page* 327

How, and where Rent may be diſtrained for, on a Leaſe determined, *ibid.*

The Diſtreſs muſt be within ſix Kalendar Months after the Determination of the Leaſe, and during the Landlord's Title and the Tenant's Poſſeſſion, *ibid.*

Where there is no Diſtreſs, an Ejectment may be brought on half a Year's Rent in arrear, 328

A Diſtreſs may be taken for Rents-ſeck, *&c.* as in Caſes of Rent on Leaſe, 329

Form of a Landlord's Warrant to diſtrain, 324

Form of the Inventory of the Goods diſtrained, *ibid.*

*Dower.* See **Jointreſs.**

*Election.*

WHAT Election is, 167, 213

Leſſor has Election to take his Remedy for his Rent, either againſt the Leſſee or Aſſignee; but if he accept of the Rent from the Aſſignee, his Election is determined, 9

Every Grant for an Election ſhall be moſt ſtrong for the Grantee, 167, 213

**Entry.** See **Diſſeiſin** and **Releaſe.**

What an Entry is, 131

How an Entry ſhall be guided, *ibid.*

How an Entry muſt be where it is to veſt or deveſt an Eſtate, where there muſt be ſeveral Entries, *ibid.*

Tenant by Statute or *Elegit* may bring Treſpaſs before Entry, 17

No Entry or Re-entry can be reſerved or given, but only to the Donor, Feoffor and Leſſor, or their Heirs, 32

A Freehold cannot ceaſe without Entry, but a Leaſe for Years may, 33, 131

A Stranger may, by Entry, take Benefit of a void, but not of a voidable Eſtate, 33

Tho' the Condition upon which the Eſtate was to ceaſe be performed, yet the Eſtate is not reveſted till Entry, 34

If Entry may be in a Thing, it ſhall not veſt before Entry, or Claim, or Act in Law, *ibid.*

Where a Condition is broken, the Freehold is not in the Party till Entry, 35

Where the Feoffee hath diſabled himſelf to perform the Condition, the Feoffor may enter, *Page* 35

What may be defeated by Entry, may be made good by Confirmation, 44

Every Entry is not a Diſſeiſin, 119

The Dying ſeiſed of Tenant for Life, taketh not away Entry, 122

A Deſcent of a Reverſion or Remainder tolls not Entry, *ibid.*

A Dying ſeiſed tolls not an Infant's Entry, *ibid.*

A Dying ſeiſed takes away the Husband's Entry in Right of his Wife, accrued after Marriage: But if the Husband die, the Wife may enter on the Iſſue, 123

But if a Woman has a Right to enter, and marries, and the Diſſeiſor dies ſeiſed during the Coverture, it tolls her Entry, *ibid.*

If a Man be diſſeiſed in Time of War, and the Lands deſcend to the Heir of the Diſſeiſor, this ſhall not ouſt a Man of his Entry, 124

A Stranger may enter into Lands in the Name of him who hath Right, 193

How Entry is to be made in the Land, 310

A Deſcent that is caſt during Non-ſanity takes not away his Heir's Entry, 123

How to make an Entry to avoid a Fine of Lands in two Counties, 131

Where an Entry into one Parcel reduces the Whole, *ibid.*

Where the general Rule for Leaſe, Entry and Ouſter in an Ejectment is ſufficient, 132

How to enter into Parcel for a Condition broken, or for a Diſſeiſee, *ibid.*

How it is where a Man is ſeiſed of divers Parcels in Poſſeſſion, and the Freehold is caſt upon the Heir, *ibid.*

Where the Entry reduceth only one Parcel, *ibid.*

An Entry to recontinue an Inheritance muſt enſue an Action, *ibid.*

How to enter where there are three ſeveral Diſſeiſors of three ſeveral Cloſes, *ibid.*

Where the Entry muſt be ſeveral, *ibid.*

Difference between a Feoffment and an Entry, *ibid.*

Where Entry into Lands within the View cannot be made, *ibid.*

Where one Action will ſerve, though the Lands lie in ſeveral Places in one County, an Entry into Parcel in the Name of the whole, is ſufficient, *ibid.*

Leſſee for Years being in a Houſe, let with a Cloſe, the Leſſor enters into the Cloſe and makes Livery; it is void for the Houſe and Cloſe, and why, *Page* 133

A Feoffment of two Acres upon two ſeveral Conditions; an Entry into one in the Name of both is not ſufficient, *ibid.*

Difference between ſeveral Rights of Entry and ſeveral Titles of Entry, *ibid.*

Where the Entry of a Stranger of his own Head, is good, 133

Entry of a Husband to the Uſe of his Wife, or Perſon entring for an Infant, *ibid.*

Where an Entry is lawful, and when not, how Eſtate veſts, *ibid.*

No Entry or Claim to avoid a Fine ſhall be of any Force unleſs an Action be commenced and proſecuted with Effect within one Year after ſuch Entry or Claim, *ibid.*

An Eſtate in Lands cannot ceaſe or be void before it is defeated by Re-entry, 134

An Inheritance cannot be determined by Condition without Entry or Claim, *ibid.*

Where he that comes in by Act in Law hath the Poſſeſſion before Entry, *ibid.*

The Manner of Entry into Lands, taking Poſſeſſion, and executing of a Deed upon the Land, 135

The Words of the Entry, 136

How the Entry to be into Lands without a Houſe, *ibid.*

How an Entry muſt be upon a Condition broken, *ibid.*

A general Entry for one Tenant in Common is an Entry for all the Reſt, 138

An Entry is a good Execution of a Recovery, *ibid.*

On a bare Entry, he is in Poſſeſſion who hath the Right, 139

Till Entry the Leſſee hath but an *Intereſſe Termini*, 314

*Eſcrow.*

Where a Leaſe is deliver'd as an Eſcrow, the ſecond Delivery makes it a Deed, 135

*Eſtate-tail.*

The ſeveral Incidents to Eſtates in Tail; and what is an Eſtate-Tail, as diſtinguiſh'd from Fee-ſimple, 36

*Eſtovers.*

The ſeveral Sorts of Eſtovers, *Page* 299

Eſtovers muſt be reaſonable, and the Tenant may take them upon the Land without Aſſignment, *ibid.*

Eſtovers and Things *de novo* cannot be granted by Bargain and Sale, 24

**Exception.**

What an Exception is, 140

Where an Exception is void, *ibid.*

It is always of a Thing granted, and *in eſſe*, *ibid.*

It excepts clearly, but a Saving doth not, *ibid.*

A Saving never amounts to a Gift of any Thing, *ibid.*

What an Exception out of an Exception, and a Saving out of a Saving, is, *ibid.*

A Leaſe of Lands, except White-acre, is void for White-acre, as if no Leaſe had been made, *ibid.*

Where Leſſee for Years of a Manor aſſigns over, excepting all Woods and Underwoods, this Exception is void and null, *ibid.*

But otherwiſe in Caſe of Tenant for Life, and why, *ibid.*

An Exception that goes to the whole Thing is void, *ibid.*

The Words *other than* will make an Exception, *ibid.*

A Leaſe of all his Lands in *B.* other than White-acre, and of his Lands in *S.* except Black-acre, for twenty Years, Remainder to *B.* in Fee, except before excepted: White-acre ſhall paſs, and why, 141

A Leaſe for Years, excepting ſuch a Houſe, ſaving to the Leſſee a Room in it: The Leſſee ſhall enjoy the Room, *ibid.*

It is not the Nature of an Exception to except a Thing not comprized in the Grant, *ibid.*

A Leaſe excepting the Woods, Waſte will not lie; and why, *ibid.*

Feoffment to Uſes, except two Cloſes to the Feoffor for Life: Theſe Cloſes deſcend to the Heir, *ibid.*

Feoffment of a Manor, except Black-acre, for Life, *Habend.* except before excepted, to the Uſe of *D.* in Tail: Black-acre ſhall not paſs to *D.* in Tail, 142

A Grant of a Manor, excepting the Courts, is void, *Page* 142

But there may be an Exception of the Demeſnes, *ibid.*

A Man hath but one Cloſe in *D.* and Grants all his Lands in *D.* but that Cloſe: This Exception is void. *ibid.*

A Man ſells his Lands in *D.* except what he ſhall deviſe; this is void, *ibid.*

Where by a Leaſe of Lands, excepting the Woods, the Soil is excepted, *ibid.*

By the Exception of Woods and Underwoods the Soil itſelf is excepted, *ibid.*

But it is not excepted by an Exception of all my Trees, *ibid.*

Five Things obſervable in Exceptions of Woods and Trees, *ibid.*

No Man can except to himſelf what belongs to another, 143

A Leaſe of a Manor, except the Advowſon: The Advowſon becomes in groſs, *ibid.*

Leaſe for Life of a Manor, (in which are a Park and Fiſh-ponds) excepting the Game and Fiſh: Leſſor afterwards grants the Reverſion of the Manor; the Game and Fiſh will paſs, *ibid.*

A Leaſe of a Farm called *D.* except one Cloſe called *F.* Leſſee covenants to do ſeveral Things concerning the Premiſſes: This ſhall not extend to the excepted Cloſe, *ibid.*

Leſſor excepts his Trees, intending to ſell them: The Law gives the Buyer Power to enter and view them, and alſo to cut them down and carry them away: But not to dig Saw-pits to ſaw the Timber there without the Leſſor's Licence, *ibid.*

Where an Exception is put laſt in a Covenant, it refers to all, 53

An Exception muſt be of a Thing ſeverable from, and not inſeparably incident to the Grant, 143

The Thing excepted muſt be a Particular out of the Grant, *ibid.*

The Exception muſt be of Part of the Thing, and not of Part of the Eſtate, *ibid.*

By what Exception of Woods in a Leaſe the Soil is excepted, 302

Where by Exception of the Trees, the Soil is not excepted, *ibid.*

A Leaſe for Years excepting one Cloſe; the Cloſe is no Part of the *Prædimiſſa*, 302

It is not Waſte to cut down dead Trees, 303

**Exchange.**

What an Exchange in Law is, *Page* 144
It muſt be by Deed indented, *ibid.*
The Word *Excambium* imports a Condition and Warranty, *ibid.*
Four Things neceſſary in an Exchange, and what they are, *ibid.*
Unequal Value or Quantity impeaches not an Exchange, but unequal Eſtate does, *ibid.* and 146
An Exchange may be of Things that lie in Grant, as well as of Lands, 144
A Releaſe of Rent in Fee for Land in Fee is good, 145
But Annuities cannot be exchanged for Land, *ibid.*
Two Women make an Exchange with another, and one marries before Entry, it defeats not the Exchange, *ibid.*
Form of the Deed of Exchange, *ibid.*
An Exchange cannot be expreſſed by any other Word, *ibid.*
A defeaſible Title exchanged for an undefeaſible Title, is good till avoided, 146
If one be evicted out of Part, the whole Exchange is defeated, *ibid.*
Exchange by an Infant; if he occupy at full Age it is perfect, *ibid.*
Exchanges voidable, but not void, *ibid.*
Lands in Poſſeſſion may be exchanged for a Reverſion, *ibid.*

*Executor.*

Executor of an Aſſignee, and the Aſſignee of an Executor may have Covenant, 7
Acceptance of Rent of the Aſſignee diſcharges the Executor, 10
Debt lies againſt an Executor, after Aſſignment, for Rent due afterwards, *ibid.*
If Aſſets, in the *Detinet* only, and is not local, *ibid.*
Though the Teſtator aſſigns, his Executor ſhall be charged in the *Detinet*, if Aſſets, *ibid.*
In Debt, Executor pleads Aſſignment before the Rent due, without ſaying he gave Notice, or that Leſſor accepted the Tenant: Naught, 11
An Executor cannot wave his Teſtator's Term as long as he hath Aſſets, *ibid.*
Executors ſhall have the Money upon a Mortgage in Fee, unleſs made payable to the Feoffor or his Heirs, 31
Executors repreſent the Teſtator more than the Heir, *Page* 31
And implied Covenant lies not againſt an Executor, 53
An Executor may bring Action on a Covenant to his Teſtator and his Heirs, for a Breach in his Teſtator's Life, 55
An implied Covenant lies not againſt an Executor, 56
Covenant with the Teſtator, his Heirs and Aſſigns; the Executor, tho' not named, may bring Covenant, 73
Leſſee covenants with the Leſſor to repair; this runs with the Land, and the Heir, not the Executor, ſhall bring the Action, *ibid.*
A Deviſe of Lands for the Payment of Debts, the Executor has but a Chattel, 305
Executors ſhall be charged with their Teſtator's Contracts as long as they have Aſſets, 11

*Executory Deviſe.*

An executory Deviſe muſt be limited on a Fee, not on a Condition, 107
A Remainder on a particular Eſtate is not Executory, *ibid.*
No contingent Executory Eſtate can be barred by Recovery, 108
A Fee veſted in any Perſon, and to be veſted in another upon a Contingency, is an executory Deviſe, *ibid.*
In all executory Deviſes the Eſtates deſcend until the Contingencies happen, *ibid.*
The ſame executory Thing which is created by a Deed, may be defeated and annulled by the Conſent of all the Parties thereto, 167
Neither a Fine nor Recovery can deſtroy an executory Deviſe, and why, 266
What an executory Deviſe is, and why it cannot be cut off, 267

**Expoſition of Deeds.**

Rules for the expounding of Deeds, *&c.* 161 *to* 168
Deeds are to be conſtrued according to the Meaning of the Makers, 161
The Owner of Lands may diſpoſe of them as he pleaſeth, according to Law, *ibid.*
What are the Things to be reſpected in Conveyances, *ibid.*
The Words of an Indenture are the Words of both Parties; but not ſo in a Deed Poll, *ibid.*

There

# *The* TABLE *to the Firſt Part.*

There are four Grounds for the Expoſition of Deeds, and what they are, *Page* 162

Where the Words ſhall be tranſpoſed and marſhalled, *ibid.*

How every Clauſe in a Deed ſhall be taken, *ibid.*

How to judge upon Acts, Deeds and Bargains, *ibid.*

Where the Words of a Deed have a double Conſtruction, how to be expounded, 163

The Words ſhall not be uſed to a double Conſtruction, *ibid.*

Inſenſible Words ought to be rejected, *ibid.*

Grants ſhall never be void, if not againſt Law, *ibid.*

Deeds are to be expounded, that all the Parts may ſtand together, *ibid.*

Nice and ſtrained Conſtructions ought to be avoided, *ibid.*

Where a Deed ſhall be expounded ſo as to make a Condition, and where to make a Covenant, *ibid.*

No Conſtruction to be againſt the Letter of a Deed, though it may in ſome Caſes vary, *ibid.*

Every Deed ſhall be taken moſt ſtrongly againſt the Grantor, 164

How Conveyances at Common Law operate, *ibid.*

Where a Falſity in a Deed ſhall not hurt, *ibid.*

The Intent is the chief Thing to be conſidered in all Agreements, *ibid.*

Where a Disjunctive is taken for a Copulative, and a Copulative for a Disjunctive, 165

The Render of a Fine ſhall have the ſame Conſtruction as another Conveyance, 156

Diverſity between two Sentences importing ſeveral Grants, and one and the ſame Sentence, *ibid.*

What may paſs by the Name of a Houſe with the Appurtenances, *ibid.*

How far *reputed Parcel* will go, 166

Where vain Words ſhall operate, *ibid.*

One Part of a Sentence reſtrained and expounded by another, *ibid.*

The Rule, *Ad proximum antecedens fiat Relatio*, expounded, *ibid.*

Where Words in the Beginning of a Sentence refer, and where Words in the Middle, *ibid.*

No Equitableneſs can alter the Law, *ibid.*

How Wills, Acts of Parliament and Awards to be expounded, *ibid.*

How it is when the Act of God intervenes, *Page* 166

Inevitable Acts ſhall not prejudice where there is no Laches, *ibid.*

*Expoſitio debet eſſe utilis & uſitata*, 167

A doubtful Conveyance ſhall be intended a Common Law Conveyance, *ibid.*

Qualifications to precedent Sentences go not to the next, if they need no Explanation by them, 89

## **Expoſition of Wills.** See **Deviſes.**

Rules for the Expoſition of Wills, 168, 169, 170, 171

How the Intent of the Parties ought to be known, 168

What diſpoſing Teſtimony a Teſtator ought to be of when he makes his Will or revokes it, *ibid.*

Difference between a Conveyance to Uſes and a Will, *ibid.*

Words in a Will ought to have a favourable Conſtruction, and why, *ibid.*

The Conſtruction of the Will muſt be to anſwer the Intent of the Teſtator, 169

Words in a Will muſt have an apparent Intent to diſinherit an Heir, *ibid.*

The Intent muſt be taken out of the Words, and not by any Averment, *ibid.*

A Will ſhall not be void if by any Conſtruction it may be made good, *ibid.*

Doubtful Words ſhall not alter an expreſs Deviſe, *ibid.*

Where the Words of a Condition in a Will may amount to an expreſs Limitation, *ibid.*

The Law doth not favour an Eſtate limited by Way of Uſe ſo much as a Will, *ibid.*

A Deviſe imports a Conſideration in itſelf, and cannot be averred to be to another Uſe, *ibid.*

All Wills concerning Lands muſt be in Writing, *ibid.*

How Wills of Lands ſhall be by the Statute of Frauds and Perjuries, *ibid.*

A Codicil for Lands annexed to a Will, how to be, *ibid.*

How a Condition ſhall be created in a Will, 170

A Deviſe of his Lands, and after in the ſame Will he deviſes a Rent-charge out of his Lands: It is good to both, and the Rent-charge in Conſtruction of Law ſhall be firſt deviſed, *ibid.*

# *The* TABLE *to the Firſt Part.*

Where there are two Deviſes in a Will of the ſame Eſtate to two ſeveral Perſons, *Page* 170

The laſt Deviſe in a Will ſhall take Place, where there are two Deviſes of the ſame Thing, *ibid.*

But in ſome Caſes both Deviſes may ſtand, *ibid.*

Latter Part of a Will overthrows the former, except an Explanation, *ibid*

Whence the Intent of the Teſtator is to be taken, and how to be expounded, *ibid.*

The Will ſhall not be favoured where it is repugnant, 171

A Will muſt not croſs the Grounds of the Law, *ibid.*

The Intent muſt be conſtrued by the Words only, *ibid.*

What Eſtate the Word *Eſtate* will paſs in a Will, *ibid.*

How it is where a Man gives the Reſidue of his Eſtate real and perſonal, *ibid.*

Where, when Lands are deviſed paying ſo much Money, it is but for Life, and where it is a Fee, *ibid.*

A Reverſion will paſs by the Deviſe of the Reſt, *ibid.*

How it is upon a Deviſe to an Heir at Law, paying Legacies, and upon Default, Remainder over, *ibid.*

**Expoſition of Words.** See *Words.*

Expoſition of Words uſed in Conveyances, 147 *to* 160

Seven Grounds for the Expoſition of Words, 147

**Fee-ſimple.**

EState in Fee-ſimple what, to a Man and his Heirs for ever, 221

When Eſtates granted ſhall be conſtrued for Life, and when in Fee-ſimple, *ibid.*

A Rent granted to a Man and his Heirs, for the Life of another, but an Eſtate for Life, not Fee, *ibid.*

**Feoffment.**

The uſual Conveyance at Common Law was Feoffment with Livery, 138

What a Feoffment is, 172

A Feoffment cannot be made of Things which lie in Grant; and why, *ibid.*

A Feoffment bars all preſent Rights, *Page* 172

When a Man is out of Poſſeſſion it is a Feoffment only that reduces the Eſtate, and makes a perfect Tenant of the Freehold, 173

Feoffments might formerly be made by Parol, but now they muſt be by Deed only; but they may be either by Deed Poll or Indenture, *ibid.*

The Deed Poll, how to be, and how the Indenture, *ibid.*

What are the Words of Feoffment, 174

There are eight formal Parts of a Feoffment, and what they are, *ibid.*

A Feoffment need not have a Clauſe of Warranty, 175

A Rent may be reſerved upon a Feoffment, *ibid.*

A Gift to a Man and his Heirs, without ſaying more, is a good Feoffment, *ibid.*

There needs no Conſideration to a Feoffment; but there muſt be Livery of Seiſin by the Feoffor, or his Attorney, *ibid.*

But ſince the Statutes of 13 & 27 *Eliz.* againſt fraudulent Conveyances, a voluntary Feoffment without good Conſideration ſhall be void againſt a Purchaſer, Mortgagee, *&c.* for a real Conſideration, *ibid.*

A Feoffment paſſes by Tranſmutation of Eſtate, 176

How to declare an Uſe upon a Feoffment, *ibid.*

How it is when no Uſe is mentioned in the Feoffment, *ibid.*

A Feoffment without Conſideration or Declaration of Uſe is to the Feoffor himſelf, *ibid.*

Difference between Uſes raiſed by Feoffment and by Covenant, *ibid.*

In a Feoffment to Uſes, the Uſes are diſpoſed of by the Livery, 177

Difference between a Feoffment to Uſes and a Covenant to ſtand ſeiſed, 178

How it is in a Feoffment where the Uſes are declared for Life, or in Tail only, *ibid.*

How it is in a Feoffment in Fee to Uſes without Conſideration, *ibid.*

How the Execution of a Feoffment is to be, *ibid.*

Feoffment in Fee; the Feoffor delivers Seiſin for Life; the Feoffee ſhall hold but for Life: But if Livery be made *ſecundum formam Chartæ*, the Fee ſhall paſs, 183

In all Feoffments there muſt be Livery and Seiſin, and how made, *ibid.*

A Feoff-

# *The* TABLE *to the Firſt Part.*

A Feoffment of an Eſtate to begin at a Day to come, is void, *Page* 184

What ſhall conclude a Feoffor to ſay it is not his Deed, *ibid.*

A Feoffment made by a Diſſeiſee with a Warrant of Attorney to enter and take Poſſeſſion, is good, 185

Tho' no Time be mentioned in the Warranty, yet Livery muſt be in the Life of the Feoffor and Feoffee, *ibid.*

In what Feoffments a Letter of Attorney may be, 186

The Attorney muſt be Party to the Deed, *ibid.*

A Feoffment made to *A. B.* Knight, who is not a Knight; good, and why, 188

A Feoffment to *William Porter* by the Name of *William Jones*, and good, *ibid.*

So to *Julian* by the Name of *Gill*, *ibid.*

So of the Manor of *Sarret* by the Name of *Searoit*, *ibid.*

Feoffment in Fee by Tenant in Tail drives his Iſſue to his Formedon, 208

A Feoffment bars him not of his Action, but of his Entry, 209

Difference between an Alienation that takes away an Entry, and an Alienation that does not toll Entry, *ibid.*

Feoffment in Fee without Conſideration and Uſe, is to the Uſe of the Feoffor, 338

Feoffment to the Uſes in his Will: The Uſe and Eſtate veſt in the Feoffee, *ibid.*

The Difference between a Feoffment to perform a Will, and a Feoffment to the Uſe of ſuch Perſon as ſhall be appointed in his Will, 349

Feoffment in Fee to the Uſe of himſelf for Life, then to the Uſe of *B.* for Life, then to the Uſe of C. for Life, *&c.* if *B.* refuſes, *C.* ſhall take his Remainder preſently, 353

Feoffment in Fee by Tenant in Fee to the Uſe of his Daughter for Life, Remainder to his Son in Tail, Remainder to the Feoffor's right Heirs: He hath a Reverſion, and his right Heirs cannot be Purchaſors, 357

Feoffment to the Uſe of ſuch Perſons and ſuch Eſtates as he ſhall appoint by his Will: The Feoffor is ſeiſed of a qualified Fee till the Limitation be made, 358

Feoffment to the Uſe of the Heirs of his Body, is an Eſtate for Life in the Feoffor, 359

But if limited to the Uſe of himſelf for Life, Remainder to another in Tail, Remainder to his own right Heirs, the Reverſion had been in him, *Page* 359

Difference between a Feoffment to the Uſe of *A.* for Life, Remainder to his Iſſue in Tail, who ſhall take by Purchaſe, and a Leaſe for Life, Remainder in Tail, where the Heir ſhall be in by Deſcent, 360

Feoffment by a Man *Non compos*, where void, and where not, 189

How to be where a Statute-Merchant is extended, and a Feoffment made by the Reverſioner, 189

For Covenants in Feoffments. See *Covenants.*

A Feoffment upon Condition, that the Feoffee ſhall not alien, is void, and why, 35

But a Feoffment upon Condition not to alien to *J. S.* is good, 36

**Fine.**

What a Fine is, 190

The Antiquity of Fines, *ibid.*

A Fine is good, and is a Diſcontinuance, tho' the Proclamations are reverſed, *ibid.*

How a Fine is pleaded, *ibid.*

A Fine may be taken by Commiſſion, *ibid.*

Fines are of two Sorts, executory and executed; and what they are, *ibid.*

The Render of a Fine muſt be out of the ſame Land to one of the Conuſees, not to a Stranger, *ibid.*

The divers Kinds of Fines, and how made Uſe of, to limit Remainders, paſs Reverſions, *&c.* *ibid.*

A Fine *ſur Conuſance* by a particular Tenant is a Forfeiture, but a Fine *ſur conceſſit* is not, 191

Render to a Stranger is not void, but voidable, *ibid.*

The Contents in the Render are of the ſame Condition, Quality and Conſtruction as Conveyances, and require not ſo preciſe a Form as a Writ, *ibid.*

Where Lands ariſing on the Part of the Mother, may go to Heirs on the Part of the Father, *&c.* *ibid.*

By Fine, Grant and Render, which makes the Conuſor a new Purchaſor, *ibid.*

After a Fine is recorded, no Feme Covert ſhall aver ſhe was not examined, 192

Where the Conuſee of a Reverſion muſt ſue out a *Quid juris clamat* againſt the Leſſee, *ibid.*

By the Stat. 34 *E.* 3. of Non-claim, if he who had a Right to Lands paſs'd by Fine, had not claimed within a Year and a Day, he was barred for ever, *Page* 192

By Stat. 4 & 5 *Anna*, No Claim or Entry to avoid a Fine ſhall be ſufficient, unleſs an Action is commenced upon it within a Year after, 193

A Fine levied, without expreſſing to whoſe Uſe, is to the Uſe of the Conuſor, *ibid.*

Conuſee of a Fine of a Reverſion to Uſes ſhall have the ſame Advantages, as if his Poſſeſſion was perfected by Attornment, *ibid.*

A Fine by one not actually ſeiſed of the Intail, will not bar a Siſter, tho' it will his Iſſue, *ibid.*

A Fine levied by the Remainder in Tail, in the Life of Tenant in Tail, will bar his Iſſue, living the Iſſue of Tenant in Tail, 194

A Fine levied by Remainder in Tail, who was not ſeiſed, will not bar another Remainder, *ibid.*

Baron and Feme, Tenants in ſpecial Tail; a Fine levied by the Baron will bar the Eſtate-tail, *ibid.*

And tho' the Feme has an Eſtate ſhe cannot bar it, *ibid.*

A Fine levied by a Feme Covert bars her and her Heirs, if not avoided by her Huſband's Entry, *ibid.*

A Fine will not amount to an Entry as a Feoffment does, *ibid.*

A Fine by Tenant in Tail is a Diſcontinuance to him in Reverſion or Remainder, *ibid.*

A Bargain and Sale, and Fine by Tenant in Tail, is no Diſcontinuance, 195

A Fine bars not a future Right, *ibid.*

Where a Fine turns not an Eſtate to a Right, there needs no Claim, *ibid.*

A Fine bars not any Eſtate *in futuro*, *ibid.*

If Tenant in Tail levies a Fine, and dies without Iſſue, he in Remainder muſt enter within five Years, *ibid.*

If Tenant in Tail bargains and ſells in Fee, and after Inrolment levies a Fine to Bargainee, it is no Diſcontinuance of the Remainder; but it is a Bar to his Eſtate-tail, *ibid.*

But if the Fine is levied before the Bargain and Sale inrolled, it is a Diſcontinuance, *ibid.*

A Fine is levied and five Years paſs before the Deviſee enters, it ſhall not hurt him, 196

A Fine by Tenant in Tail bars his Iſſue, tho' he but Tenant in Tail in Remainder, *Page* 196

Fine by the Huſband, Tenant in ſpecial Tail, binds the Iſſue, tho' the Mother ſurvive, *ibid.*

Deviſe to one when he attains the Age of twenty-five: He comes of Age, and levies a Fine before he is twenty-five: It bars his Iſſue, *ibid.*

Fines levied by Leſſee for Years, or at Will, or Copyholders, are not within the Statute 4 *H.* 7. concerning the Levying of Fines, 197

Where Leſſee for Years levies a Fine, Leſſor ſhall have five Years after the Term, to make his Claim, and enter, 198

If Tenant for Life and firſt Remainder in Tail levy a Fine, it is no Diſcontinuance, nor deveſting of the ſecond Remainder in Tail, *ibid.*

By 31 *Eliz. c.* 2. Fines are to be proclaimed four Times, once in every Term, *ibid.*

The Lands paſs from the Time of the Entring of the King's Silver, 199

If Tenant in Tail makes a Feoffment and levies a Fine, it bars his Iſſue, 201

Fine and Non-claim bars not a Remainder, *ibid.*

A Fine and Non-claim binds not the Eſtate, but the Right, *ibid.*

Fine by Tenant in Tail is only a Diſcontinuance to the Remainder or Reverſion, *ibid.*

A Remainder or Reverſion cannot be diſcontinued by any but him to whom the Land is intailed, *ibid.*

A Fine levied by Diſſeiſee, bars not a future Right, *ibid.*

A Fine bars no Eſtate in Poſſeſſion, Remainder or Reverſion, not deveſted; nor him who had no Title of Entry, 202

Fine and Non-claim bars no future Intereſt till five Years after it begins, *ibid.*

A Right to an Extent, extended, and a Term, will be barred by a Fine and Non-claim, *ibid.*

Fine levied by Mortgagor in Poſſeſſion, and Non-claim for five Years, will not bar the Mortgagee, *ibid.*

Leſſor ſhall have five Years after the Expiration of the Leaſe on a Fine levied by Leſſee for Years, or Life, *ibid.*

Every Fine ſhall be intended to be levied with Proclamations, 204

Heir in Tail cannot aver Seiſin in a Stranger when the Fine was levied, *Page* 204

*H.* and his Wife, Tenants in ſpecial Tail, Remainder to *B.* in Tail, Remainder to *C.* in Fee; *H.* alone levies a Fine and dies; and his Wife enters. It is a Remitter to her and to *B.* and *C.* in Remainder, but the Iſſue of *H.* is barred, 206

Fine levied by the Father, without Diſſeiſin of the Grandfather, who is Tenant in Tail: It binds the Iſſue of the Father, 206

Baron and Feme, Tenants in ſpecial Tail; Fine by Baron bars the Iſſue, *ibid.*

But the Wife may be remitted, or enter as Tenant in Tail on his Death, *ibid.*

A Fine by Tenant in Tail, in Poſſeſſion, Reverſion or Remainder, bars his Iſſue, *ibid.*

Tenant in Tail levies a Fine, and dies before Proclamations paſſed. If the Proclamations paſs without Claim made by the Iſſue, his Right is barred, and he cannot by any Claim ſave it, *ibid.*

Though the Iſſue enters before Proclamations are paſſed, yet when paſſed, it is a Bar, 207

The Iſſue before Proclamations paſſed, brings a Formedon: The Tenant pleads the Fine and Proclamations paſt. It is a Bar to the Demandant, *ibid.*

The Heir in Tail may be barred, tho' the Eſtate is defeated before the Proclamations paſſed, *ibid.*

Tho' the Heir in Tail be an Infant, under Coverture, or beyond Sea, yet he is barred by the Fine, *ibid.*

Where a Fine ſhall enure as a Releaſe, the Conuſee having the Fee before, 209

Writs of Error to reverſe Fines, and how brought, 211

Where a Fine is levied of a Reverſion, the Conuſee muſt ſue out a *Quid juris clamat* againſt the Leſſee, 273

Where there muſt, and where there need not be a Command precedent, or an Agreement ſubſequent to make good the Entry of a Stranger to avoid a Fine, 133

If Iſſue in Tail levies a Fine in the Life of Tenant in Tail, it binds his Iſſue, 274

Tenant for Life, and he in Remainder in Tail, may join in a Fine, *ibid.*

The five Parts of a Fine.

1. The Original, what, 191
2. The *Licentia concordandi*, what, 192
3. The Concord, what, *Page* 192
4. The Note of the Fine, what, *ibid.*
5. The Foot of the Fine, what, *ibid.*

*Fine and Non-claim.*

If the Leſſee is not diſpoſſeſſed, Fine and Non-claim does not bar, tho' another be in Poſſeſſion; and he may enter, but if turn'd to a Right it ſhall bar, 125

Leſſee ouſted and Leſſor diſſeiſed: If the Diſſeiſor levy a Fine, Leſſor and Leſſee are barred by five Years Non-claim, *ibid.*

But Leſſor might have enter'd to ſave his own Eſtate, and Leſſee's Intereſt, *ibid.*

Leaſe to commence at the End of a former Leaſe *in eſſe*, which determines: Reverſioner enters, makes a Feoffment and levies a Fine; the Leſſe is barr'd by five Years Non-claim, *ibid.*

But a Fine by a Diſſeiſor deveſts not a future Intereſt, 126

Tenant in Fee, to continue the Eſtate in his Blood, leaſes for 500 Years in Truſt; and being ſo poſſeſſed, covenants with others, on the Conſideration in the Leaſe, to ſtand ſeiſed, and the Leaſe to be to the ſame Uſes; and levies a Fine, and five Years paſs, and dies: The Fine is no Bar to the Leaſe, *ibid.*

But a Fine by a Diſſeiſor deveſts a future Intereſt, *ibid.*

A Fine levied after a ſecret Diſſeiſin ſhall not enure to the Diſſeiſor, 129

If a Fine is levied to a Diſſeiſor, he in Remainder may enter, 130

Where the Mortgagor continues Poſſeſſion, levies a Fine, pays the Intereſt, and five Years paſs; it ſhall not bar the Mortgagee, *ibid.*

*Forfeiture.*

What Acts will amount to a Forfeiture, 297

That Tenant for Life ſhall not commit a Forfeiture, is a Condition annexed in Law, 37

How a Man may forfeit his Term, 316

*Form of Deeds, Covenants, &c.*

Form of a Deed of Bargain and Sale, 19

—— Of the Inrolment of a Deed in the King's Bench, 23

—— Of the Inrolment when acknowledged before a Judge, 24

Form of a Deed of Confirmation, *Page* 44

—— Of a Covenant to levy a Fine, 63

—— Of a Recovery with treble Voucher by Leaſe and Releaſe, 67

—— Of a Covenant that he is ſeiſed in Fee, free from Incumbrances, 70

—— Of a Covenant for farther Aſſurance, 79

—— Of a Letter of Attorney to enter and take Poſſeſſion, 135

—— Of a Letter of Attorney to deliver a Deed, 136

—— Of a Deed of Exchange, 145

—— Of a Warrant of Attorney in a Deed to take Livery and Seiſin, 187

—— Of the Indorſment of Livery on the Deed, 188

—— Of the Words of the Grant by Deed Poll, 204

—— Of a Bargain and Sale for a Year to enable Bargainee to take a Releaſe, 236, 237, 238, 239

—— Of a Releaſe upon the Bargain and Sale for a Year 239, 240, 241, 242

—— Of a Releaſe, 257

—— Of a Grant of a Reverſion, 275

—— Of a Grant of a Rent-charge, 279

—— Of a Deed of Surrender, 291

—— Of a Leaſe for Years, 319

—— Of a Landlord's Warrant to diſtrain, 324

—— Of the Inventory of the Goods diſtrained, *ibid.*

—— Of a Leaſe made by Attorney, 336

—— Of a Deed of Covenant to ſtand ſeiſed to Uſes, 364

*Freehold.*

A Freehold cannot ceaſe without Entry or Claim, 34

A deſcendible Freehold may be deviſed, 113

If a Freeholder releaſe to him who enters of his own Head, *nil operatur,* 120

A Freehold cannot commence *in futuro,* 216

And why, 217

*Gifts.* See **Grants.**

*Grants.*

Grant, what it is, 212

Every Grant ſhall be taken moſt ſtrongly againſt the Grantor, *ibid.*

Where the Words of a Grant have a double Signification, how it ſhall be, *Page* 212

A Deed may be void againſt ſome Perſons, but not againſt the Grantor, *ibid.*

The general Grounds for the Expoſition of Deeds and Grants, *ibid.*

To be beneficial to the Taker, according to Intent, and conſonant to Rules of Law, *ibid.*

There muſt be a Donor, Donee, and Thing given in all Gifts or Deviſes, *ibid.*

An Eſtate veſted by Common Law ſhall be preferred before an Eſtate veſted by Statute Law, 213

Every Grant ſhall be taken moſt ſtrongly for the Grantee to have his Election, *ibid.*

A Grant is a Common Law Conveyance, *ibid.*

How the Words of a Grant ſhall be conſtrued, *ibid.*

Where all who have Intereſt join, it makes a good Grant, *ibid.*

How Conveyances ought to be expounded, 214

The Form of the Words of a Grant by a Deed Poll, *ibid.*

How a Grant is executed, *ibid.*

Grant by a wrong Name, and good, 215

A Man baptized by one Name, and confirm'd by another, may be Grantee by the Name of Confirmation, *ibid.*

A Grant to one not naming his Chriſtian Name, where void and where not, *ibid.*

Grant to a Biſhop in his political Capacity, *ibid.*

No Conſtruction of a Grant to the Prejudice of any, *ibid.*

Where an impoſſible Grant may come to take Effect, *ibid.*

A Grant ſhall include all Things pertinent to it, *ibid.*

Grant to *B. Habendum* after the Death of the Grantor, is void, and why, 216

A Man who is not Party to the Deed cannot take but in Remainder, *ibid.*

Lands in Poſſeſſion cannot paſs by a Grant of a Reverſion, but *econtra* they may, *ibid.*

A Man may grant what he hath not actually but potentially, *ibid.*

An uncertain Grant may be reduced to a Certainty, *ibid.*

A Grant to two *& hæredibus* without *ſuis* is void, *ibid.*

An Hundred granted by the King *ſimul cum* the Leet, the Leet paſſes, 217

# *The* TABLE *to the First Part.*

A Man ſhall not by his own Act defeat his own Grant, *Page* 217

Where all Parties concerned in Point of Intereſt join in the Grant, it is good, 218

Lands granted in the Pariſh of *S.* in the Poſſeſſion of *B.* They were in the Poſſeſſion of *B.* but in another Pariſh. The Grant is void, and why, 219

A Man by Deed inrolled for Money *Gives and Grants* a Rent to *B.* and his Heirs: This is good without the Words *Bargain and Sell*, *ibid.*

A Man grants all the Trees in his Wood; the Grantee may cut them down and carry them away, *ibid.*

By a Grant of his Woods the Soil paſſes; but in a Leaſe of Lands, excepting his Woods, the Soil is not excepted, 220

A Man grants and lets his Manor, and all Timber growing there, except ſix Trees: Here the Word *Grant* is no more than a Demiſe of the Trees, *ibid.*

Where a Man ſells all his Trees, to be taken within five Years, the Vendee ſhall not take them after the five Years: But otherwiſe it is where the Taking is limited by Way of Covenant, *ibid.*

A Grant of all Woods and Underwoods; they ſhall not be cut a ſecond Time, *ibid.*

A Grant of all Woods that ſhall grow is void, *ibid.*

Apple-Trees do not paſs by a Grant of all Woods and Trees, *ibid.*

A Grant of ſo many Years of his Term, as ſhall be to come at his Death, is void, *ibid.*

Where a Term is granted *Habendum* after his Death, how it is to be, *ibid.*

A Grant of a Term after his Death is void; but when he grants it *Habendum* after his Death, the *Habendum* is void, and it paſſes by the Premiſſes, 221

A Rent granted to *B.* and his Heirs: *Habendum* to him and his Heirs, to the Uſe of him and his Heirs, for the Life of *S.* This is but an Eſtate for Life deſcendible, *ibid.*

Eſtates granted when Fee-ſimple, and when for Life, *ibid.*

Where a Demiſe can never take Effect, 222

A Man grants his Manor of *D. in Com. S.* which Manor lies in two Counties: That Part of it only that lies *in Com. S.* paſſes: But otherwiſe when the Words are, *All other his Lands in* England, *Parcel of his Manor:* There all paſſes, *Page* 222

How it is where the Word *Pro* is in the Grant, *ibid.*

A Poſſibility cannot be granted nor deviſed, *ibid.*

Livery is made upon a Bargain and Sale, the Deed is not inrolled: This ſhall paſs as a Grant, and be ſo pleaded, *ibid.*

Where no Eſtate is limited by the Grant, how it paſſes, 225

Grants of the King, when void; for the Benefit of the Succeſſor, *ibid.*

Where the King is deceived in his Grant, *ibid.*

What Grants of the King may be reſumed, and what not, *ibid.*

Where a Surrender ſhall enure as a Grant, 294

A Grant of a Rent of 20 *l. per Annum* until 100 *l.* be paid, is an Eſtate for five Years: But a Grant out of a Manor worth 20 *l. per Annum* till 100 *l.* be paid, is an Eſtate for Life determinable, becauſe of the Uncertainty of the Profits, 305

A Grant of a Reverſion expectant on Life, in Conſideration of natural Love to *B.* his Son, to the Uſe of himſelf for Life, to the Son in Tail, Remainder in Tail, is void, 350

A Grant *quouſque* the Grantee and his Heirs had levied ſo much Money: The Money is not levied when it might, yet the Grantee may hold over, and why, 354

A Grant of ten Load of Fuel to be taken yearly in ſuch a Wood. If Grantee fails taking them at the appointed Time, he ſhall not take them after, 355

But if the Grantor were to deliver them, the Grantee ſhall have double the next Year, *ibid.*

Difference between a Grant of a Thing that lies in *Render* and where in *Prender*, *ibid.*

To what the Words *Give and Grant* do enure, and how they ſhall be conſtrued, 163

What the Grant of a Thing includes, 166

What the Words *Give and Grant* in a Deed will amount unto, 214

A Man by Deed inrolled, for Money, *Gives and Grants* to *B.* and his Heirs: This is good without the Words *Bargain and Sell*, 219

The Word *Grant* will make Land paſs by way of Uſe, 237

Form of the Words of a Grant by Deed Poll, *Page* 214
Form of a Grant of a Reverſion, 275
Form of a Grant of a Rent-charge, 279

## **Habendum.**

THE *Habendum* enlarges the Eſtate, 45
Where it makes a Fee, *ibid.*
Diverſity between *Habendum* the Eſtate and *Habendum* the Land, *ibid.*
Where it creates an Eſtate-tail, and where a Fee-ſimple, *ibid.*
Two Jointenants; one confirms the Eſtate of the other, *Habendum* to him and his Heirs, he hath a ſole Eſtate, 47
The two Parts of the *Habendum*, 174
The *Habendum* muſt paſs away the Eſtate preſently, and not *in futuro*, *ibid.*
Where a Term is granted, *Habendum* after his Death, how it is to be, 220
The Office of the *Habendum* in a Deed, 224
A Grant by Indenture without expreſſing to whom, though it be *Habendum* to *A. B.* who is a Party to the Deed, is void, *ibid.*
Though the *Habendum* be void, yet no Eſtate of Freehold ſhall paſs by Implication againſt the expreſs Intention of the Party, *ibid.*
The *Habendum* ſhall never introduce a Stranger to the Deed, *ibid.*
Tenant in Fee cannot grant his Eſtate, *Habendum* after his Death, *ibid.*
How it is where no Eſtate is expreſſed in the Beginning of the Deed, and an expreſs Eſtate is limited by the *Habendum*, 225
Sometimes the *Habendum* gives an Eſtate where none was given before, *ibid.*
Sometimes to a Perſon not named, *ibid.*
Sometimes it will alter the Eſtate given in the Premiſſes, *ibid.*
A Man gives to one and his Heirs, *Habendum* for Years, or for Life: This is void, and the Deed ſhall take Effect by the Premiſſes, *ibid.*
An *Habendum* contrary to the Premiſſes is void, *ibid.*
A Grant of a Term, *Habendum* after his Death; the Premiſſes ſhall carry it, *ibid.*
Where the *Habendum* ſhall ſtand when it is of leſs Eſtate than is limited in the Premiſſes, 226
A Thing limited before the *Habendum* need not be named again in the *Habendum*, *ibid.*
The Office of the Premiſſes is to expreſs the Certainty, and of the *Habendum* to qualify the Eſtate, *Page* 226
The *Habendum* may enlarge the Premiſſes, *ibid.*
And it may abridge them, *ibid.*
The *Habendum* may alter, abridge or fruſtrate what is before in the Premiſſes, *ibid.*
It may explain the Premiſſes, *ibid.*
Or make them void, *ibid.*
Where the *Habendum* ſhall be an Explanation of the Premiſſes, *ibid.*
A Grant in the Premiſſes, *Habendum una cum* another Thing not belonging to it; that mentioned in the *Habendum* ſhall not paſs, 227
The *Habendum* not purſuant to the Premiſſes is void, *ibid.*
How it is where Lands are given to two, *Habendum* to the Uſe of them and the Heirs of their Bodies, *ibid.*
Where the *Habendum* qualifies the general Words in a Grant, 22
How it is where the Premiſſes and the *Habendum* differ, *ibid.*
The *Habendum* may enlarge the Premiſſes, but not abridge them, *ibid.*
Where many Things are granted in a Deed, and the *Habendum* comes to limit the Eſtate; it is ſuperfluous to recite all the Particulars, 214
How the *Habendum* is to be conſtrued, *ibid.*
*Habendum ſimul cum*, and *una cum*, how to be taken, 217
How it ſhall be where an Eſtate-tail is expreſſed in the Premiſſes, and a Fee-ſimple in the *Habendum*, 228
*Habendum* to one not Party to the Deed is void by Way of *Habendum* the Eſtate, but good by Way of Remainder, *ibid.*
Where the Words of the *Habendum* ſhall be taken diſtributively, *ibid.*
A Leaſe, *Habendum* from the Date of the Indenture is from the Time of the Delivery; but *Habendum* from the Day of the Date, excludes the Day whereon dated, *ibid.*
Where the Premiſſes are of two Acres, and the *Habendum* but of one, it is void, and why, *ibid.*
Where a Limitation to one and his Heirs, *Habendum* for Life, is void, and where not, 229

Where a Rent in Common is granted in the Premiſſes in Fee, *Habendum* to the Grantee for Years, the *Habendum* is void, *Page* 229

*Habendum* to one not Party to the Deed: He cannot take unleſs by way of Remainder, 299

A Demiſe to *A.* and his Heirs, *Habendum* to him and his Heirs for three Lives: It is for three Lives as in the *Habendum*, 300

A Leaſe to two, *Habendum* to one of them and a third Perſon, is void, 228

A Party to the Deed not named in the Premiſſes, cannot take by the *Habendum* at the Common Law, but ſhall by the Statute of Uſes, *ibid.*

Lands given to two, *Habendum* the one Moiety to one of them, and the other Moiety to the other, is good, 229

The *Habendum* muſt ſet forth the Intereſt which the Leſſee is to have, 316

*Illiterate.*

AN illiterate Perſon is not bound to ſeal any Writing, unleſs it be read to him, 54

And if it be in other Language than *Engliſh*, it muſt be expounded to him, *ibid.*

*Implication.*

What is a neceſſary Implication 105

No Eſtate can ariſe by Deed, by Implication, but may by Will, *ibid.*

A Deviſe after the Death of himſelf and Wife, to *J. S.* Deviſor dies, the Land deſcends to the Heir at Law, during the Life of the Deviſor's Wife, by Implication, *ibid.*

A Deviſe to the Heir, and if he die without Iſſue Male, then, *&c.* This is an Eſtate-tail by Implication, *ibid.*

A Diverſity between an Eſtate implied in the Premiſſes and an Eſtate expreſſed, 225

Where the Law gives a Thing, it gives at the ſame Time by Implication what is neceſſary for the Taking and Enjoyment thereof, 309

A Leaſe is made, *Habendum* at the Will of the Leſſor: The Law implies the Will of the Leſſee alſo, *ibid.*

*Incloſure.*

Incloſure is one of the Cauſes of Diſſeiſin of a Rent-ſeck, *Page* 120

Alſo of a Rent-charge, *ibid.*

Alſo of a Rent-ſervice, *ibid.*

Why Incloſure is a Diſſeiſin, *ibid.*

*Incumbrance.* See **Covenant to ſtand ſeiſed**, &c.

A Suit in Chancery is no Incumbrance, but a Moleſtation, upon which Covenant lies for quiet Enjoyment, 92

*Indenture.*

Every Indenture muſt be indented, 19

Tho' the Words of an Indenture are the Words of the Feoffor only, yet if the Feoffee ſeals it, it is the Deed of both, 49

Grants and Agreements in Indentures are mutual, 50

The Word *Covenant* in an Indenture is the Word of both Parties, *ibid.*

Indentures declaring the Uſes of a ſubſequent Fine, or Recovery, are but directory, and bind not the Eſtate, 65

But if the Fine or Recovery purſue the Indenture, there can be no Averment taken againſt the Indenture, That it was after agreed the Fine, *&c.* to be to other Uſes, unleſs the Uſes are limited by a Matter of as high a Nature, *ibid.*

But if the Indentures are not purſued as to the Quantity of the Land, *&c.* an Averment to other Uſes without Writing, may be taken, *ibid.*

Tho' a Writing begin, *This Indenture*, and is of two Parts, yet if the Parchment is not indented, it is no Indenture, 91

An Indenture held a good Will, 102

Indentures for the Declaration of Uſes may be void in Part, and good in Part, 166

How an Indenture of Feoffment is to be, 173

An Indenture is an Eſtoppel, but a Deed Poll is not, *ibid.*

An Indenture muſt be written in Parchment or Paper, *ibid.*

How the Indenture muſt be where there is one or more Warrants of Attorney to make or take Livery, 186

*Indorſement.*

Where an Indorſement is Part of a Deed, and where not, *Page* 167
An Indorſement made at the Time of Seiſin and Delivery, is Part of the Deed; but if it be made after, it is a new Deed, 175
An Indorſement of Livery, how to be made, 182
Indorſements of Livery have always been favourably expounded, 188
Indorſement of the Inrolment of a Deed, 24

*Infant.*

Infants are bound at Law by Conditions, 34
A Deviſe to an Infant *en ventre ſa mere* is good, 109
What Laches ſhall prejudice an Infant, 122
If an Infant infeoffs and dies, his Heir may enter, or have his Action, *ibid.*
An Infant leaſes, and Leſſee enters, the Infant has Election, either to bring an Aſſiſe, or accept the Leaſe at full Age, 128
If an Infant exchange Lands, and after, when he comes of full Age, occupies thoſe Lands, the Exchange is perfect, 146

*Inrolment of Deeds.*

By Statute 27 *H.* 8. *cap.* 16. No Manors, Lands, *&c.* ſhall paſs to make a Freehold, or any Uſe thereof, except by Indenture ſealed and inrolled in one of the Courts at *Weſtminſter*, or in the County where the Lands lie, within ſix Months after the Date, 14, 15, 16
Fees to be paid for the Inrolment, 13
The Clerk of the Peace for each County to inrol it, and deliver the Rolls to the *Cuſtos Rotulorum*, 15
A Chattel will paſs without Inrolment, 16
No Eſtate paſſes by Aſſignment of Commiſſioners of Bankrupt, unleſs inroll'd, *ibid.*
The Manner of inrolling Deeds in the King's Bench, 23
The Caption in Court, 24
The Form of the Inrolment when acknowledged in Court, *ibid.*
The Indorſement, *ibid.*
The Caption before a Judge, *ibid.*
The Form of Inrolment when acknowledged before a Judge, *Page* 24

*Intent.*

The Intent is the chief Thing to be conſidered in all Agreements, 164
Whether where a Deed is made to one in his Abſence, and without his Knowledge, an Agreement be not intended, and whether the Law will not ſuppoſe an Aſſent till his Diſagreement appears, 291

*Intereſt.*

An Intereſt cannot be granted jointly and ſeverally, but a Power may be joint and ſeveral, 97

*Intruſion.*

What is an Intruſion, 172
Why an Intruder cannot be Tenant at Sufferance, 308

*Jointenant.*

Two Jointenants; one confirms the Eſtate of the other; they are as they were before, 47
But if it be *Habendum* to him and his Heirs, he hath a ſole Eſtate, *ibid.*
Jointenants and Tenants in Common cannot be diſſeiſed by their Companions without actual Ouſter, 119
If one Jointenant releaſe to another all his Right, it enures by Way of *Mitter l'eſtate*, without the Word *Heirs*, 256

**Jointreſs.**

Who is a Jointreſs, 230
All Alienations made by the Wife of the Husband's Lands, are void, *ibid.*
A Jointure of an Eſtate from the Wife's Anceſtors is not within the Statute of 11 *H.* 7. *cap.* 20. *ibid.*
An Eſtate in Fee convey'd to a Woman for a Jointure, is not a Jointure within the Stat. 11 *H.* 7. 232
But an Eſtate in Fee, conveyed to a Woman for her Jointure and in Satisfaction of her Dower, is within the Statute, *ibid.*
A Jointure to bar Dower muſt be an Eſtate for Life at the leaſt, and muſt commence

mence immediately aſter the Death of the Husband, *Page* 234

An Eſtate for Life on Condition is a Bar of Dower, if the Wife accepts it, *ibid.*

It muſt be made for herſelf, and be expreſs'd in Satiſfaction of her whole Dower, *ibid.*

A Jointure made before Marriage cannot be waived to take Dower, *ibid.*

But if before Marriage Lands are ſettled in Part, and aſter in full of her Jointure, ſhe may take the firſt, and her Dower alſo, *ibid.*

If a Woman conceals her Jointure and brings Dower, ſhe ſhall loſe her Jointure, *ibid.*

A Woman may enter on her Jointure without Action, and be endow'd on Eviction, *ibid.*

If ſhe be evicted of Part of her Jointure, ſhe ſhall have Dower *pro tanto*, 235

The Wife joining with her Husband in Levying a Fine of her Jointure, ſhall not have Dower in other Lands, *ibid.*

Unleſs the Jointure be made aſter Marriage, *ibid.*

A Jointure is not forfeited by the Treaſon of the Husband, *ibid.*

*Leaſe, Leſſor, Leſſee.*

If Leſſor enters for Condition broken, the Eſtate is determin'd, 9

Leſſor has Election either againſt the Leſſee or Aſſignee, but Acceptance of the Rent of the Aſſignee determines his Election, *ibid.*

Yet he may have an Action of Covenant aſter Acceptance, *ibid.*

Leſſor aſſigns the Reverſion, and aſter releaſes to Leſſee all Covenants; the Releaſe is no Bar, being made aſter the Aſſignment, 9

Leſſee cannot diſcharge himſelf or his Executors from a ſpecial Covenant, 10

Leſſee cannot aſſign more than he hath, 12

Leſſee for Years leaſeth Part of the Term, and aſter bargains and ſells the Reverſion of it to another, without Attornment: The Grantee cannot diſtrain, nor bring Debt for the Rent, *ibid.*

Leſſor, ſeis'd in Fee, grants the Reverſion for Years; it is good without Attornment, 13

Such preciſe Words are not required in the Caſe of a Leaſe for Years, as of a Freehold, 29

A Leaſe for Years ſhall not be void for Non-payment of Rent, without an actual Demand, *Page* 33

Diverſity where it is that the Leaſe ſhall be void, and where it is that the Leſſor ſhall re-enter, *ibid.*

A Leaſe by a Biſhop confirm'd by a ſucceeding Biſhop and Patron, is good, 43

Leſſee may have Covenant, tho' he ſeals not the Leaſe, 49

If the Leſſee ſeals his Part, but the Leſſor ſeals not his, *nil operatur*, 50

If Leſſor covenants, that aſter the End of the Leaſe he will make another to the Leſſee, who dies before the Term ends, yet the Leſſor muſt make the Leaſe to his Executor or Aſſignee, 56

If Leſſee for Years covenants not to alien on Pain of Forfeiture, he hath a conditional Eſtate, 57

Leaſe ſealed by Leſſor and not by Leſſee, yet Covenant will lie againſt Leſſor, 59

The Word *Covenant* will make a Leaſe, tho' the Word *Grant* be omitted, 60

Licence to hold the Land for a Time, amounts to a Leaſe, *ibid.*

Tenant for Life leaſes for twenty-one Years; and covenants that he hath done no Act to prejudice the Leaſe, but that the Leſſee ſhall enjoy againſt all Perſons: The Words, *But that he ſhall enjoy*, &c. refer to the Words, *for any Act done by him*, &c. 78

Licence to hold for a Time will amount to a Leaſe without either of the Words *Covenant* or *Grant*, 100

Eviction of Leſſee diſcharges Rents, Bonds and Covenants, 97

Leaſe dated in *January*, rendring Rent at *Michaelmas* and *Lady-day:* The laſt Words ſhall be tranſpoſed, 98

Leaſe for Years rendring Rent: *Proviſo* if in arrear, to enter. If Leſſor demands the Rent, and it is not paid, and aſter accept it before Re-entry, he diſpenſes with the Condition, 99

If Leſſor diſtrain aſter the Demand, he affirms the Leaſe, *ibid.*

If a Leaſe for Years concludes that the Leaſe ſhall be void, Acceptance of Rent cannot make it good, *ibid.*

But in a Leaſe for Life, which cannot be avoided before Entry, Acceptance of Rent bars the Entry, *ibid.*

# *The* TABLE *to the Firſt Part.*

If a Parſon, *&c.* leaſes, rendring Rent, and dies, tho' the Succeſſor accepts the Rent, it is void, *Page* 99

But if a Biſhop leaſe for Years and die, if the Succeſſor accepts the Rent he ſhall never avoid it, 100

What Leaſes for Lives and Years, Biſhops and Spiritual Perſons may make, *ibid.*

Leaſe to be made as Counſel ſhall adviſe: It muſt be the Counſel of him who is to have the Leaſe, 101

A Leaſe ſhall be taken moſt ſtrongly againſt the Leſſor, 164

A Leaſe by a contrary Name of Baptiſm, or by a wrong Name, is good, 214

Leſſee for ninety-nine Years demiſes for twenty Years, to commence from his Death; the Leſſor dies: This was held to be a good Leaſe, and why, 221

Where a Demiſe can never take Effect, 213

Leſſee for Years may grant over his Intereſt before Entry, 222

A Leaſe to *A.* and his Aſſigns, during his Life, and the Lives of *B.* and *C.* This is no Merger of the Lives of *B.* and *C.* 227

A Leaſe to two, *Habendum* to one of them, and a third Perſon, is void, *ibid.*

A Leaſe to *B.* for his Life, *Habendum* to him and his Aſſigns for the Lives of *C. D.* and *E.* He hath an Eſtate for four Lives, and it doth not determine upon his Death, but there will be an Occupancy, 228

Whether a Leaſe, *Habendum a die nativitatis* of our Lord, without ſaying *Feaſt*, be void, or ſhall commence from the Delivery, *ibid.*

A Leaſe for forty Years, *Habendum* after the Expiration of a Leaſe made to *J. S.* and there was no ſuch Leaſe; the Leaſe for forty Years ſhall commence preſently, *ibid.*

*A.* ſeiſed in Fee, leaſes to *B. Habendum* to *C.* and alſo to *D.* for their Lives, and the Liſe of the longer Liver: *A.* only can take, he being the only Party to the Deed: The Reſt being named only in the *Habendum*, cannot any Ways take but by Way of Remainder; and that they cannot do here, for Incertainty, *ibid.*

Leaſe of two Acres, *Habendum* one for Years, and nothing ſaid of the other: It is a Leaſe for Years of one Acre, and at Will for the other, *ibid.*

A Leaſe to *B. Habendum* to *B.* and alſo to *C.* and *D.* for their Lives, *B.* only takes preſently, and the others cannot take but by Remainder; and why, *Page* 263

A Leaſe by a Remainder-Man during the Liſe of Tenant for Life, is a good Leaſe, 270

Difference between a Leaſe in Reverſion and a Leaſe of a Reverſion, 273

Until the Leſſee enters the Leſſor hath no Reverſion, *ibid.*

The Leſſee hath a future Intereſt till his Entry, but a Bargain and Sale for Money puts him in Poſſeſſion preſently, 274

If the Grantee of a Rent for Liſe takes a Leaſe for Years of Part of the Land, and ſurrenders the Leaſe, the Leaſe is abſolutely determined as to the Leſſor and Leſſee, 294

But it is *in eſſe* as to Strangers, *ibid.*

If the King's Leſſee takes a new Leaſe without reciting the old, it is void, *ibid.*

A Leaſe for 100 Years, if *B.* and *C.* ſo long live, is conditional; when either dies it is gone; but if *during* the Lives of *B.* and *C.* it is not gone by the Death of one of them, 300

A Leaſe to Baron and Feme for twenty Years, if they or any Child between them to be begotten ſhall ſo long live; and one of them died. Yet the Leaſe ſhall endure as long as any of the Perſons named in the Proviſo ſhall live, *ibid.*

A Leaſe to *A.* and his Aſſigns, *Habendum* to him during his Life, and the Lives of *B.* and *C.* Here is no Merger of the Lives of *B.* and *C.* for the Leſſee hath but one Eſtate by one Deed, 301

A Leſſee ſhall not dig for Coals unleſs the Coal-Mines are open, *ibid.*

What Intereſt Leſſee of Lands, for Liſe or Years, hath in the Trees, *ibid.*

And what remains to the Leſſor, *ibid.*

In whom the Property of the Timber is, *ibid.*

Where it belongs to the Leſſor only, *ibid.*

How the Leſſor may grant Trees to be cut down, and how not, *ibid.*

By what Exception of Words in a Leaſe the Soil is excepted, 302

And where by Exception of Trees the Soil is not excepted, *ibid.*

Tenant for Life, without Impeachment of Waſte, cuts down Timber-Trees, the Reverſioner ſhall have them, *ibid.*

Who ſhall have them when cut down by Tenant in Tail after Poſſibility, 303

What Damages ſhall be recovered by the Leſſee, for cutting down of Timber, *ibid.*

Where a Houſe falls down by Tempeſt or Accident, who ſhall have the Timber, *Page* 303

How it is where a Houſe is thrown down by the Leſſee, *ibid.*

Timber-Trees thrown down by Tempeſt are the Leſſor's; but Dotards are the Leſſee's, *ibid.*

It is not Waſte to cut down dead Trees, *ibid.*

Leaſe excepting the Trees; afterwards the Leſſor grants the Trees to the Leſſee: This doth not re-unite them to the Land, 304

Where the Grantee of the Reverſion may take Advantage of a Condition upon a Leaſe for Years, not upon a Leaſe for Life, *ibid.*

A Leaſe to a Woman, *durante viduitate*, or any like uncertain Time, the Leſſee hath a determinable Eſtate for Life, 305

Leaſes by Tenants in Tail by Statute, and by a Husband of the Wife's Land, *&c.* *ibid.*

Where the Leſſee holds over, Payment and Acceptance of Rent amount to a new Leaſe, 307

A Leaſe *de Anno in Annum, quamdiu, &c.* Leſſee died in Part of the third Year; it is a Leaſe certain for that Year, 312

**Leaſe and Releaſe.**

If Leſſor is not in actual Poſſeſſion, he muſt enter, and ſeal and deliver the Deed on the Land, 236

Leſſor ſeiſed in Fee to make a Leaſe for Years, muſt give Poſſeſſion, or raiſe an Uſe, *ibid.*

It is the beſt Way to mention a Conſideration of five Shillings, *ibid.*

Leaſe for Years, without Conſideration, the Leſſee hath no Eſtate till Entry, nor the Leſſor any Reverſion; nor will a Releaſe operate to enlarge an Eſtate without Poſſeſſion; nor can Leſſee bring Treſpaſs, but may bring an Ejectment, 237

Leaſe and Releaſe make but one Conveyance, 139, 239

A Releaſe will operate without a Conſideration; but it is convenient to put one in, *ibid.*

The Words of *Littleton* in Releaſes, 240

Poſſibilities, Rights, Titles, or Choſes in Action, cannot be granted or aſſigned, but may be releaſed to the Tertenant, *ibid.*

The Releaſee muſt be in ſome Poſſeſſion of the Eſtate, *Page* 240

A Releaſe will not enure to Tenant at Sufferance for want of Privity, *ibid.*

Otherwiſe where a Man is in Poſſeſſion by Virtue of a Leaſe, *ibid.*

What is required to the well making of a Releaſe, *ibid.*

Leaſe for Life or Years, and Releaſe of all Right, *&c.* without the Word *Heirs*, is but an Eſtate for Life: But a Releaſe to the Leſſee and his Heirs is an Eſtate of Inheritance, 241, 242

Feoffment or other Conveyance without Conſideration, not ſaying to whoſe Uſe, it ſhall be to the Uſe of the Feoffor, 242

To make a Tenant to a *Præcipe*, the Releaſe muſt be to him and his Heirs, to the Uſe of him and his Heirs for ever, *ibid.*

A Releaſe may be made upon Condition, *ibid.*

No Covenants neceſſary in a Releaſe, *ibid.*

The Form of a Bargain and Sale for a Year, to enable the Bargainee to take a Releaſe, 236

The Form of the Releaſe upon the Bargain and Sale, 239

How Leaſe and Releaſe came to be practis'd, 241

How Leaſe and Releaſe is at the Common Law, *ibid.*

*Legacy.*

If Lands are deviſed to pay Legacies, and moſt are paid; the Deviſee may have Relief, and why, 38

Difference between the Deviſe of a Legacy out of Land and a Deviſe of the Land itſelf, *ibid.*

Whether the Payment of Legacies is a good Payment in *Plene Adminiſtravit* pleaded in Covenant, before Covenant broken, 59

Legacies are meer Gratuities, *ibid.*

*Letters Patent.*

Letters Patent ſhall be taken for a Covenant, as well as if it were an Indenture, 61

Why the Grantee, though no Party to them, ſhall be bound by them, *ibid.*

How far *reputed* Parcel will go in Letters Patent, 166

How it is when Letters Patent may be taken to two Intents; and how when good to one, and void to another, 167

Grant of Land by Letters Patent, *Habendum a die Confectionis*, adjudged void, and why, Page 182
So likewiſe if the *Habendum* be *a die datus*, 216
Letters Patent amount to a Livery in Law, 218

*Licence.*

Licence to hold for a Term will amount to a Leaſe, 91, 100, 318

*Limitation.* See **Condition.**

What are Words of Limitation, 39
A Limitation upon a Poſſibility after a Poſſibility is void, 40
The Eſtate ceaſes upon a Limitation without Entry or Claim, 41
Land deviſed to the eldeſt Son, paying, &c. adjudg'd a Limitation, 42
Difference between a Limitation and a Condition, 134, 300
Where a Limitation to one and his Heirs, *Habendum* for Life, is void, and where not, 229
A Diverſity where the Limitation is in general Words, as to the right Heirs of *J. G.* or to him who ſhall firſt come to St. *Paul's*, 267
Leaſe to *J. B.* for 80 Years, if he live ſo long, and if he die within the Term, his Wife ſhall have it for the Reſidue: This is a void Limitation as to the Wife, 268
A Limitation determines an Eſtate without Entry or Claim, but a Condition doth not, *ibid.*
Lands are conveyed to *A.* and *B.* and *their Heirs* in Fee, till 1000 *l.* is raiſed: This is a Fee limited or conditional, 41
But if to *A.* and *B.* without the Word *Heirs*, it is but a Chattel, *ibid.*

*Livery.*

If Livery is made before Inrolment, it will make the Deed a Feoffment, 18
A Deed is made in Conſideration of Money, with a Letter of Attorney for Livery, Inrolment makes it a Bargain and Sale, *ibid.*
A Grant, Bargain and Sale in Conſideration of Money, with a Letter of Attorney for Livery; if Livery be made before Inrolment, it ſhall paſs by Livery, 19
If Leſſor makes a Deed to the Leſſee for Years, with the Words *Dedi & conceſſi* to him for Life, this veſts an Eſtate for Life without Livery, *Page* 45
Where no Livery is requiſite, *ibid.*
Livery is always requiſite in Feoffments, 173
A Deed executed by Livery ſhall not take Effect any other Way, 179
How Seiſin is to be delivered of a Houſe, *ibid.*
If there be Leſſee for Years in Poſſeſſion, he muſt aſſent, or the Livery will be void, *ibid.*
If the Leſſee be a Witneſs either to the Deed or the Livery, it is good, for it ſhews his Aſſent, *ibid.*
Feoffment of a Houſe and ſeveral Cloſes which are in Leaſe; if Livery be made in the Cloſes, (the Leſſee, his Wife or Servants being in the Houſe) the Livery is void for the whole, 180
If divers Parcels of Land are contain'd in a Deed, and the Feoffor delivers Seiſin of one Parcel, according to the Deed, all the other Parcels paſs, though he ſay not, *in the Name of all*, *ibid.*
How Seiſin is to be delivered of Land, *ibid.*
How of a Houſe and Land, *ibid.*
Who can make and take Livery, 181
Diſſeiſee makes a Feoffment, and Letters of Attorney to make Livery, and good, *ibid.*
Livery made upon a miſtaken Date is void, *ibid.*
What muſt be done after Livery made, *ibid.*
The Indorſement of Livery; how to be made, *ibid.*
Livery muſt paſs a preſent Freehold, *ibid.*
Where Livery is void, and why, 182
Where the Deed is void the Livery is void, *ibid.*
How it is when Livery is made by Attorney not in the Deed, *ibid.*
And how the Indorſement to be, *ibid.*
If made by Attorney, it muſt be made in the Life of Feoffor and Feoffee, *ibid.*
Livery cannot be made in the Abſence of the Feoffor or Feoffee, but only by Warrant of Attorney, *ibid.*
An Attorney can neither make nor take Livery but by Deed, *ibid.*
Livery made upon Condition where there is none in the Deed, is void, 183

Letter of Attorney to deliver Seiſin upon Condition; the Attorney makes it abſolutely: The Livery is void, *Page* 183

Feoffment in Fee; the Feoffor delivers Seiſin but for Life; the Feoffee ſhall hold but for Life: But if Livery be made *ſecundum formam chartæ*, the Fee paſſes, *ibid.*

Feoffment to *A.* for Life, Remainder to the Heirs of his Body: Livery *ſecundum formam chartæ* is good, *ibid.*

Livery ſhall be taken moſt ſtrongly againſt the Feoffor, *ibid*

In what Caſes Livery muſt be made, *ibid.*

Every Livery ought to operate preſently, *ibid.*

The Leaſe and Livery ſhould be executed at the ſame Time, 184

Livery cannot be made to a Leſſee who hath the Poſſeſſion already, *ibid.*

Livery muſt be made to a preſent Eſtate, *ibid.*

Livery made upon a Deed after it is acknowledged, and before it is inrolled; it ſhall paſs by the Livery, *ibid.*

If it be inrolled before Livery it ſhall paſs by Bargain and Sale; otherwiſe if the Livery be before the Inrolment, *ibid.*

Livery prevents the Operation of Inrolment, 185

Only a Tenancy at Will paſſes till Livery, *ibid.*

Livery muſt be in the Life of the Feoffor, 186

Livery to one upon a Feoffment to two is good, *ibid.*

Leſſee for Years muſt not be in Poſſeſſion when Livery is made, 187

If Livery be made while Leſſee for Years, or for Life, or a Feme Covert continues in Poſſeſſion, the Livery is void, 188

How it muſt be when a Reverſioner makes Livery, *ibid.*

How Livery ſhall be when Leſſee for Life leaſes out Parcel, and the Feoffor makes a Feoffment and Livery in that Parcel, *ibid.*

Feoffment and Livery within the View how to be, *ibid.*

By the Grant of the Profits of the Land with Livery the Soil paſſes, 189

Where there needs no Livery to paſs a Freehold, 218

A Livery ſhall be moſt ſtrongly taken againſt the Feoffor, 225

Till Livery nothing paſſes but an Eſtate at Will, 229

A Leaſe for Years, Remainder for Life, in Tail, or in Fee; Livery muſt be made to the Leſſee for Years, *Page* 262

There muſt be Livery to the Leſſee to paſs the Remainder of a Freehold, 267

*Miſnoſmer.*

A Leaſe for Years by a contrary Name of Baptiſm, is a good Leaſe, and why, 214

A Leaſe to *Joan* by the Name of *Jane*, and good, *ibid.*

A Man baptized by one Name, and known by another, grants by his known Name, and good, *ibid.*

A Man baptized by one Name and confirm'd by another, may be Grantee by his Name of Confirmation, *ibid.*

A Grant to *A.* and *Ellen* his Wife, whoſe Name is *Emlin*, good, and why, 215

A Feoffment to *William Porter* by the Name of *William Jones*, held good, 188

So to *Julian* by the Name of *Gill*, good likewiſe, *ibid.*

A Manor is known by the Name of *Sarret*, and he who is ſeiſed of that Manor makes a Feoffment of it by the Name of *Sarroit*, and delivers Seiſin *ſecundum formam Chartæ*, good, and why, *ibid.*

A Grant to one not naming his Chriſtian Name, void; except where the Perſon is known by his Office, *ibid.*

*Mortgage.*

How a Mortgage for Years may be aſſigned, 1

It muſt be aſſign'd by Deed, *ibid.*

What is a Tender in Mortgage, 30

The Executors ſhall have the Money upon a Mortgage in Fee, unleſs it be made payable to the Feoffor or his Heirs, 31

A Horſe, or other Thing, may be paid in Satisfaction of the Mortgage Money, if the Mortgagee will accept it ſo, 32

What will make the Mortgagor Tenant at Will to the Mortgagee, 311

*Nil habuit in Tenementis.*

In Debt for Rent, the Defendant pleads *Nil habuit in Tenementis*; the Plaintiff replies, not ſetting forth the mean Conveyances from the Tenant in Fee: This is naught

# *The* TABLE *to the First Part.*

naught on Demurrer, but good after Verdict, *Page* 13

*Nil habuit in Tenementis* is no Plea in Covenant for a Sum in groſs, 93

Where Tenant for Years may plead *Nil habuit in Tenementis*, 314

*Non Compos.*

A Diſcent caſt during Non-ſanity takes not away the Entry of the Heir, 123

If one of *Non ſane* Memory makes a Feoffment, he cannot enter, nor have his Action, but his Heir may, *ibid.*

Where a Feoffment by a Man *Non Compos* is void, and where not, 189

*Notice.*

Aſſignee need not ſet forth Notice of Aſſignment in his Plea, 12

In Covenant, Notice need not be ſo ſtrictly given as in Caſe of a Bond, 54

Notice need not be laid in a Declaration on a Covenant to ſave harmleſs againſt a Man by Name, *ibid.*

But, in a general Covenant to ſave harmleſs, Notice muſt be alledged, *ibid.*

Notice muſt be given to him to whom the Conveyance is to be made, who is to give Notice thereof to him who is to make it, 74

Covenant to ſeal ſuch Conveyance as Counſel ſhall adviſe: The Covenantor muſt produce his Title to the Counſel, and give Notice thereof, 75

When the Obligor may chuſe what Aſſurance he will make, he muſt give Notice to the Obligee, 82

*Occupancy.*

THE Proviſion made againſt Occupancy by the Statute of Frauds and Perjuries, 227

A Leaſe to *A.* for his Life, *Habendum* to him and his Aſſigns for the Lives of *C. D.* and *E.* He hath an Eſtate for four Lives, and it doth not determine upon his Death, but there will be an Occupancy, *ibid.*

What an Occupancy is, 297

How it may be deviſed by Will, *ibid.*

Where the Heir ſhall be chargeable with an Occupancy, as Aſſets by Diſcent, *ibid.*

Where it ſhall go to the Executors, *ibid*

What is a ſpecial Occupancy, 298

An Occupancy cannot paſs without Deed and Livery, *Page* 298

*Offices.*

Where a Man may be diſcharged from an Office, and where not, 294

If an Officer for Life takes a Grant of the ſame Office to him and another, it is not a Surrender, 294

A Covenant to ſtand ſeiſed of an Office, is void, 313

*Ouſter.*

There are two Sorts of Ouſter, the one expreſs, the other implied, 310

What is an expreſs Ouſter of Tenant at Will, *ibid.*

What is an implied Ouſter, *ibid.*

There muſt be an actual Ouſter of the Freehold to make a Diſſeiſin, 119

Jointenants and Tenants in Common cannot be diſſeiſed by their Companion without an actual Ouſter, *ibid.*

*Patron.*

PAtron and Ordinary may charge the Glebe in the Time of the Vacation, and why, 219

If the ſucceeding Patron and Biſhop confirm the Leaſe of a Rectory made by a Parſon, though neither of them were Biſhop or Patron at the Time of granting the Leaſe, it is good, 43

*Plea and Pleading.*

A Bargain and Sale in Fee, with Livery, tho' not inrolled, may be pleaded as a Grant, 16

How to plead a Covenant for quiet Enjoyment, 79

How to plead a Covenant for farther Aſſurance by Fine, 80

In aſſigning a Breach upon mutual Promiſes, it is not neceſſary to aſſign a Breach on the Plaintiff's Side, 52

To Covenant for Non-feaſance, the Defendant muſt plead, that he hath not done; and to Covenants for Feaſance, Performance generally; but if the Covenant for Non-feaſance be void, he muſt Plead Performance generally, 56

Covenant that he was ſeiſed in Fee according to the Indentures made to him by one *W.* Breach, That he was not ſeiſed in Fee. Plea, That he was ſeiſed of as good an Eſtate as *W.* conveyed to him: Held no Plea, *Page* 73

That *J. S. habens legalem titulum* enter'd; this is not a ſufficient Breach without ſhewing what Title, 79

But *habens priorem & legalem titulum* would be good, 86

Covenant to enjoy *ſine interruptione alicujus*, the Title of the Interrupter muſt be ſhewn, 92

Covenant in a ſecond Indenture may not be pleaded in Bar to a former, *ibid.*

How a Gift, Releaſe, Confirmation or Surrender may be pleaded, 214

*Nil habuit in Tenementis* is no Plea in Covenant for a Sum in Groſs, 93

In Debt for Rent, the Defendant pleads *Nil habuit in Tenementis*: The Plaintiff replies, not ſetting forth the mean Conveyances from Tenant in Fee: This is naught on Demurrer, but good after Verdict, 13

Where Tenant for Years may plead *Nil habuit, &c.* 314

*Premiſſes.*

Where the Word *Premiſſes* ſhall not extend to the Thing excepted, 165

The Office of the Premiſſes in a Deed, 174, 224

The Premiſſes are void without a Grantor and Grantee in them, 224

A Diverſity between an Eſtate implied in the Premiſſes, and an Eſtate expreſſed, 225

A Man gives to one and his Heirs *Habendum* for Years, or for Life: This is void, and the Deed ſhall take Effect by the Premiſſes, *ibid.*

A Grant of a Term, *Habendum* after his Death; the Premiſſes ſhall carry it, *ibid.*

The Office of the Premiſſes is to expreſs the Certainty of the Eſtate; and the Office of the *Habendum* is to qualify the Eſtate, 226

A Leaſe for Life or Years of a Farm, except a Cloſe: The Word *Premiſſes* ſhall not extend to the Cloſe, 302

*Privity.*

The ſeveral Sorts of Privities, 7, 258

Privity of Eſtate, what, *ibid.*

Privity of Contract, what, *Page* 7, 258

Privity in Reſpect both of Eſtate and Contract, what, 8

When the Privity of Contract is gone, the Land only is Debtor, *ibid.*

Privity is required wherever a Confirmation enlarges an Eſtate, 44

There muſt be Privity in a Releaſe, 46

A Releaſe to the Leſſee for Years of my Diſſeiſor is void for want of Privity, 47

The Word *Privies* extends only to Heirs in Fee, 199

*Privies* in the Purview of the Act of 4 H. 7. is the operative Word, and contains as much as the Words *All Privies to them who levy the Fine, in* 32 H. 8. cap. 36. *ibid.*

There muſt be Privity where a Confirmation enlarges an Eſtate, 44

There muſt be Privity of Eſtate in him who is ſeiſed to an Uſe, 343

*Promiſe.* See *Covenant.*

Covenant to pay Money on the other's Covenant to do ſuch an Act, is a Promiſe againſt a Promiſe; and the one may have his Action for the Money, and the other for the Breach of the Covenant, 52

In aſſigning a Breach upon mutual Promiſes, it is not neceſſary to aſſign a Breach on the Plaintiff's Side, *ibid.*

Where Promiſes are diſtinct and mutual, each may have an Action againſt the other, 53

*Proviſo.*

How a *Proviſo* in a Deed ought to be expounded, 39

How in a Will, *ibid.*

*Proviſo* by Way of Agreement amounts to a Covenant, and an Action well lies upon it, 58

Form of a *Proviſo* to revoke old Uſes and declare new ones, 368

Covenant to repair, and Leſſor covenants to give Notice to repair within three Months: *Proviſo*, for Non performance of Covenants, the Leaſe to be void: The ſecond Covenant qualifies the firſt; but the *Proviſo* ſeparates them, 88

Leaſe rendring Rent, *Proviſo* that the Leſſee gather certain Rents, and pay them to the Leſſor: This is no Covenant, but a Condition, 90

*Purchaſe.* See *Deſcent.*

A Man cannot, either by Conveyance at the Common Law, by Limitation of Uſes, or Deviſe, make his right Heir a Purchaſer, *Page* 356

Right Heir is not a Name of Purchaſe, *ibid.*

Who ſhall be an Heir to take by Purchaſe, 357

Where a Man is in by Deſcent, he ſhall be liable to the Acts and Charges of his Anceſtor, *ibid.*

But where he takes by Purchaſe his Anceſtor's Acts ſhall not touch him, *ibid.*

Where the Anceſtor takes a Freehold, and limits an Eſtate to his Heirs, they are Words of Limitation, not of Purchaſe, *ibid.*

Where the Anceſtor retains an Eſtate for Life, and limits an Eſtate to his Heirs, they ſhall be in by Deſcent, *ibid.*

Where the Heir takes an Eſtate as a Reverſion, he is in by Deſcent, *ibid.*

But where he claims a Remainder of an Eſtate deveſted out of his Anceſtor, he ſhall claim by Purchaſe, *ibid.*

Tenant in Fee makes a Feoffment in Fee, to the Uſe of his Daughter for Life, Remainder to his Son in Tail, Remainder to the Feoffor's right Heirs: Yet the Tenant in Fee hath a Reverſion, and his right Heirs cannot be Purchaſors, *ibid.*

The Anceſtor cannot make the right Heirs Purchaſors without putting the whole Fee-ſimple out of himſelf, *ibid.*

*Recital.*

WHere Covenant lies upon a Recital in a Deed, 61

Covenant not conſiſting with the Recital does not oblige, 92

**Recovery.** See **Fine.**

What a Recovery is, 243

At Common Law none could falſify a Recovery but he who had the Freehold, *ibid.*

None can falſify a Recovery but ſuch as Claim under the Sufferer, *ibid.*

A Common Recovery is a *Fictio juris*, a common Aſſurance of Lands, whereon Uſes may be limited and raiſed, *ibid.*

How a Recovery is ſuffer'd, by Agreement to bring a Real Action, ſuppos'd Warranty and Voucher therein, Judgment by Default, *Page* 243

A Recovery with a ſingle Voucher bars the Tenant to the *Præcipe*, and his Heirs, of the Eſtate-tail in Poſſeſſion, 244

A Recovery with ſingle Voucher bars no Eſtate, but ſuch as Tenant in Tail hath in Poſſeſſion, *ibid.*

And deſtroys all Reverſions and Remainders, *ibid.*

By a Recovery with double Voucher all Intereſts, Eſtates, and Titles in the Vouchee at the Time of the Warranty are barred, *ibid.*

The Intent of the double Voucher, *ibid.*

The Intent of the treble Voucher, *ibid.*

If the Feoffee of the Tenant in Tail ſuffer a Recovery, it bars not the Eſtate-tail, unleſs Tenant in Tail be vouched, 245

Againſt what Tenants the Recovery may be had, *ibid.*

The Writ of Entry muſt be brought againſt the Tenant of the Freehold in Poſſeſſion, *ibid.*

If there be an Eſtate for Life in Being, it muſt be ſurrender'd before the Recovery, *ibid.*

Why Recoveries are favoured in Law, *ibid.*

A Recovery ſhall be to the Uſe of him who ſuffered it, if no Uſes are declared, *ibid.*

The Recompence in Value goes only to them who vouch, 246

A Recovery againſt Tenant for Life only, is a Forfeiture, *ibid.*

How Tenant for Life, and Remainder in Tail, may bar the Intail and a Remainder in Fee, *ibid.*

How the common Aſſurance by a Recovery is made, *ibid.*

Fine and Recovery by Tenant in Tail bars Remainder in Tail, 247

A Recovery by Tenant in Tail with double Voucher bars his Iſſue and all Remainders and Reverſions, *ibid.*

It bars becauſe at Common Law every Recovery was a Bar, *ibid.*

A Recovery bars not an executory Eſtate, *ibid.*

A Recovery againſt Tenant in Tail deſtroys all *Proviſo's* and Conditions depending on it, 248

A Recovery bars the Eſtates and all Powers annexed, *ibid.*

Deviſe to an Heir, to pay his younger Sons,

Sons, *&c.* otherwiſe the Land to be to them; the Heir cannot bar them, *Page* 248

Gift in Tail, reſerving a Rent: Recovery by Tenant in Tail bars not the Rent, *ibid.*

Nor a Rent granted by Tenant in Tail, or in Fee, *ibid.*

Deviſe if his Son *T.* has no Iſſue at his Death, then to his Son *L.* But if *T.* has Iſſue, to the Heirs of *T.* for ever. *T.* ſuffers a Recovery, and dies without Iſſue. *T.* had but an Eſtate for Life, and the Deſcent of the Reverſion to him as Heir, deſtroyed not the Remainder; and it is no Contingency upon a Contingency, nor an executory Deviſe to *T.* but a contingent Remainder deſtroyed by the Recovery, 248

In what Caſes a Recovery bars, where there is Privity, not Strangers, as on a Fine, 249

Leaſes are not barred by a Recovery, *ibid.*

Difference between a Leaſe for 100 Years to raiſe Daughters Portions in another ſeparate Deed, and in a Marriage-Settlement; the latter may be barred by Recovery, but not the former, *ibid.*

The Wife with her Husband, Tenant in Tail, ſuffers a Recovery; good to bar her of Dower, 250

Wife, Tenant in Tail; the Husband alone makes a Tenant to the *Præcipe*, who vouches Husband and Wife: It is a good Recovery, 251

Two Husbands are ſeiſed in the Right of their Wives, in Tail, as Tenants in Common: They muſt vouch jointly, and not ſeparately, *ibid.*

*A.* Tenant in Tail, and *B.* his Wife, Tenant for Life, Remainder to *C.* in Tail, Reverſion to *A.* in Fee: *A.* levies a Fine to *D.* who vouches *A.* only: The Uſes of the Recovery were to *A.* for Life, then to *B.* for Life, then to the Heirs of *A.* This Recovery ſhall bar tho' the Wife be not vouched, *ibid.*

An Intail to *A.* and *B.* his Wife, and to the Heirs of the Body of *A.* A Recovery againſt *A.* as Tenant, who vouches the common Vouchee to the Uſe of *A.* It is no Bar, 252

*A.* Tenant in Tail, Remainder to *B.* in Tail, Remainder to *C.* in Tail, Remainder to *D.* in Fee. *A.* makes a Feoffment, and Feoffee ſuffers a Recovery, and vouches *B.* It is no Bar to *A.* but it is a Bar to *B.* and all the Remainders, *ibid.*

*A.* and *B.* his Wife are ſeiſed, and to the Heirs of the Body of *A.* who bargains and ſells in Fee, and Bargainee vouches *A.* It bars the Eſtate-tail, *Page* 253

Where Indentures are precedent to the Recovery, there can be no Parol Averment, that it was to other Uſes, *ibid.*

But on Indentures ſubſequent there may be an Averment to other Uſes, *ibid.*

No Eſtate-tail is preſerved by 34 *H.* 8. but may be barred, except Tails created by Patent, *&c.* *ibid.*

A good Tenant to the *Præcipe* makes a good Recovery, 265

A Rent ſhall ariſe out of the Eſtate of *Ceſtuy que Uſe* on a Recovery, 349

If a Recovery be had, and no Uſe declared, it is to his own Uſe, *ibid.*

Remainder-Man in Tail grants over his Remainder for Life; Remainder to the King upon Condition; Tenant in Tail ſuffers a Recovery: It bars the Eſtate of the Tenant for Life, and the Condition alſo, 265

He in Remainder after an Eſtate-tail grants a Rent-charge, leaſes for Years, acknowledges a Statute, *&c.* Tenant in Tail ſuffers a Recovery: This bars them all, 266

A Recovery ſuffered by Tenant in Tail in Poſſeſſion, binds all Perſons till it comes to the Crown, *ibid.*

Where a Fine or Recovery can deſtroy an executory Deviſe, and why, *ibid.*

Tenant for Life ſurrenders to the Heir in Tail, he may ſuffer a Recovery, 274

But without the Surrender of Tenant for Life, there can be no Recovery, *ibid.*

*Reddendum.* See *Rent.*

**Releaſe.**

What a Releaſe is, 255

A Releaſe of a Condition for one Hour is a Releaſe for ever, *ibid.*

Several Manners of Releaſes, *ibid.*

He who takes a Releaſe of a bare Right, muſt be Tenant of the Freehold, *ibid.*

A Releaſe of a Right to a Tenant for Years in Poſſeſſion is good, *ibid.*

But not before the Leſſee's Entry, *ibid.*

Releaſes operate either by Way of Enlargement, *Mitter l'eſtate*, *Mitter le droit*, or Extinguiſhment, *ibid.*

A Uſe may be limited, or a Rent reſerved on a Releaſe which enures by Way of *Mitter l'eſtate*, l'eſtate, or Enlargement, but not by Way of *Mitter le droit* or Extinguiſhment, *Page* 256

If Leſſor releaſe to Leſſee for Years, it enlarges his Eſtate for Life: But if he releaſe to him and his Heirs, he hath a Fee, *ibid.*

When a Releaſe enures by Way of enlarging an Eſtate, there muſt be Privity, *ibid.*

Privity, Eſtate, and ſufficient Words in Law are required in a Releaſe to enlarge an Eſtate, *ibid.*

If one Jointenant releaſe to another all his Right, it enures by Way of *Mitter l'eſtate*, without the Word *Heirs*, *ibid.*

If Diſſeiſee releaſe to Diſſeiſor, it enures by Way of *Mitter le droit*, *ibid.*

To a Releaſe that enures by Way of *Mitter le droit* there muſt be Privity, *ibid.*

When a Releaſe is made to the Tenant of the Land who cannot have the Thing releaſed, as a Rent-charge, Common, *&c.* it enures by Way of Extinguiſhment, *ibid*

A Releaſe may be by Indenture or Deed Poll, 257

What Words are neceſſary in a Releaſe, *ibid.*

A Releaſe in Law, *ibid.*

A Releaſe to Tenant for Life, or for Years, enures only for Life without the Word *Heirs*, *ibid.*

But a Releaſe to him and his Heirs paſſes an Inheritance, *ibid.*

Tenant for Life leaſes for Life, Remainder in Fee; if the Leſſor releaſe to his Leſſee's Tenant for Life, though without the Word *Heirs*, yet he is for ever barred, and it ſhall enure to him in Remainder, *ibid.*

A Releaſe to Tenant at Sufferance is void, 259

A Releaſe paſſes no Eſtate but to him who hath an Eſtate in Privity, *ibid.*

Every Releaſe to him in Reverſion or Remainder enures alſo to the Tenant of the Freehold, *ibid.*

Releaſe to Tenant for Life enures to them in Remainder, *ibid.*

Releaſe by Tenant for Life to the Reverſioner is void, and why, *ibid.*

A Releaſe of all the Right he ſhall or may have, is void, *ibid.*

But if a Warranty be annexed, it ſhall bar him and his Heirs, *ibid.*

A Releaſe enuring to enlarge an Eſtate operates not without Poſſeſſion, *ibid.*

Where a Releaſe to a Remainder-Man is good, 251

How a Releaſe to be made when in Truſt, *Page* 260

Where a Releaſe is made in Truſt, if the Words *To the Uſe of*, &c. are not in the Deed, it will not be executed by the Statute, *ibid.*

A Releaſe to make a Tenant to the *Præcipe*, muſt be made *To the Uſe of*, &c. *ibid.*

A Releaſe of all Actions, Suits and Quarrels, releaſes not Covenants to do a collateral Act, but a Releaſe of all Covenants will, *ibid.*

A Releaſe of all Actions is better than of all Actions real and perſonal, *ibid.*

A Covenant or Promiſe not broken, will not be releaſed by a Releaſe of all Demands, *ibid.*

But by a Releaſe of Promiſes and Covenants it will, *ibid.*

A Releaſe of all Demands had, or that he ſhall have, releaſes not a future Rent, *ibid.*

A Covenant not to ſue is an abſolute Releaſe, and may be pleaded in Bar, *ibid.*

But not to ſue in ſuch a Time is no Releaſe, *ibid.*

A Poſſibility cannot be releaſed, 252

Nor Bond when given to the Uſe of another, *ibid.*

And when a Releaſe is given on a particular Occaſion, that reſtrains the general Words, *ibid.*

Where Releaſe to one, will diſcharge another, *ibid.*

Releaſe of all Demands extends not to Obligations ſubſequent, 261

Acknowledgment that a Debt is ſatisfied, a good Releaſe, *ibid.*

A Releaſe will extinguiſh a Rent, 46

A Lord may releaſe his Right in the Tenancy, ſaving Fealty and Rent, *ibid.*

There muſt be Privity to a Releaſe, *ibid.*

A Releaſe for a Day, or an Hour, is good for ever, 47

A Releaſe to the Leſſee for Years of my Diſſeiſor is void for Want of Privity, but a Confirmation is good, *ibid.*

Difference between a Releaſe and a Confirmation, *ibid.*

Where a Releaſe to Tenant for Life ſhall enure to him in Remainder, tho' a Confirmation would extend only to Tenant for Life. *ibid.*

A Releaſe of all Suits is no Releaſe of Covenants, 51

A Releaſe to one who enters of his own Head, works nothing, Page 120

But a Releaſe to Tenant at Will is good, 121

**Remainder.**

What a Remainder is, 262

The import of the Word *Remainder*, ibid.

It muſt be of ſomething which is, ibid.

It may be upon a particular Eſtate, ibid.

Not upon an Eſtate in Fee, ibid.

But there may be a contingent Uſe circumſcribed, ibid.

Where the Grantee takes nothing, the Remainder is void, and why, ibid.

The particular Eſtate and the Remainder make but one Eſtate, ibid.

A Remainder muſt veſt during the particular Eſtate, or *eo inſtante* that it determines, ibid.

A Remainder to Heirs on a Leaſe for Life, is void; but good on Feoffment to Uſes, 263

Contingent Remainders are to have a Freehold to ſupport them, ibid.

He who takes by Remainder need not be Party to the Deed, ibid.

He who is not Party to the Deed cannot take a preſent Eſtate, but he may a Remainder, ibid.

A Remainder is moſt proper to be limited in the *Habendum*, ibid.

A Man may take a Remainder by Way of Uſe, ibid.

A Man covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Wife for Life, then to ſuch Perſon as ſhe ſhould appoint; no Uſe ariſes to the Perſon appointed, 264

There are croſs Remainders in Deeds and Wills, but not allow'd by Implication, ibid.

Remainders by Will, &c. good without a particular Eſtate, ibid.

A Deviſe of a Remainder to a Stranger by Will is good, ibid.

Difference between a Remainder created by Will, and where by the Statute of Uſes, ibid.

A Remainder may be conveyed away by Grant, 265

By Bargain and Sale, ibid.

By Fine by the Remainder-Man in Tail, ibid.

Where it is a contingent Remainder, and where an executory Deviſe, 266

When a contingent Remainder muſt veſt, Page 266

A contingent Remainder to a Man's Son, after Remainder to his Wife, is not deſtroy'd by Attainder of the Father, ibid.

Where Right of Entry preſerves a Remainder, ibid.

A Remainder ought to paſs preſently to him in Remainder, or be in Abeiance, 267

Where a Remainder ſhall never veſt, ibid.

Where a Remainder is void, 268

A Leaſe of Life, Remainder to the right Heirs of *J. S.* then living: This Remainder cannot veſt in the right Heir of *J. S.* and why, ibid.

*Seniori puero*, a good Name to take a Remainder, ibid.

A Leaſe for Years with Livery, Remainder to the right Heirs of *J. S.* (who is then living) this Remainder is void, and why, ibid.

A Man cannot grant a Remainder of his Eſtate to *A.* Remainder to *B.* and why, ibid.

Where the Claim of a Remainder by Virtue of a Condition ought to be made, ibid.

A Man cannot by any Conveyance in Poſſeſſion limit a Remainder to his right Heirs, but he may by Way of Uſe, ibid.

Where a contingent Remainder is void for Want of an Eſtate to ſupport it, 269

Where the particular Eſtate is defeated, the Remainder is alſo thereby defeated, ibid.

Where by the Defeating of the particular Eſtate the Remainder is defeated, and where not, 270

He that hath a Remainder veſted may grant or deviſe it, ibid.

What is ſufficient to ſupport a contingent Remainder, ibid.

Where the particular Eſtate is merged, the contingent Remainder is gone alſo, ibid.

Where the Deſcent of the Fee prevents the contingent Remainder, ibid.

Deviſe to a Man for Life, Remainder to the Heirs of his Body now living, is a Remainder veſted, and not contingent, ibid.

A Remainder or Reverſion expectant upon an Eſtate-tail is no Aſſets to the Heir in Debt upon his Father's Bond, nor of any Account in Law, ibid.

But 'tis otherwiſe of a Reverſion on an Eſtate for Life, or Years, ibid.

Remainders over by Tenants in Tail are void, ibid.

So when a Remainder is limited after a void Eſtate, Page 270

Feoffment in Fee to the Uſe of himſelf for Life, then to the Uſe of *B.* for Life, then to the Uſe of *C.* for Life, *&c.* If *B.* refuſes, *C.* ſhall take his Remainder preſently, 353

If Tenant in Fee leaſe for Life, Remainder to the right Heirs of his Body, the Remainder is void, 359

## Rent.

What a Rent is, 277

How to declare for Rent, *ibid.*

Three Sorts of Rents, *ibid.*

Rent-ſervice by Tenure, what, *ibid.*

The Lord may diſtrain for Rent-ſervice of common Right, *ibid.*

Though a Rent-ſervice be tendered on the Land at the Day, and the Lord be not there to receive it, he may diſtrain for it afterwards; but if he refuſes it upon the Tender, he cannot diſtrain without a Demand, *ibid.*

A Rent cannot be reſerved out of any incorporeal Inheritance; but Debt lies for it as a Sum in Groſs, 278

Rent reſerved, what, *ibid.*

Rent-ſervice may be apportioned, *ibid.*

But a Rent-charge cannot, and why, *ibid.*

The Grantee of a Rent-charge may releaſe Part, *ibid.*

Three Cauſes of Diſſeiſin of a Rent-ſervice, *ibid.*

What a Rent-charge is, *ibid.*

A Reſervation of Rent muſt always be to the Grantor, *ibid.*

If the Deed be, *If the Rent be behind, being demanded,* he muſt demand it before he diſtrain, *ibid.*

Upon Non-payment the Grantee may have an Action of Annuity, or diſtrain, 279

But if he recover by Annuity, he diſcharges the Land, *ibid.*

Where the Land is only bound, the Perſon is diſcharged, *ibid.*

No Annuity lies againſt the Heir of the Grantor, though he have Aſſets, unleſs the Grant be for him and his Heirs, *ibid.*

Annual Sum to be paid to a Stranger, is no Rent but a Sum in Groſs, *ibid.*

If there be no Clauſe of Diſtreſs it is a Rent-ſeck, for which if he had Seiſin he may have an Aſſiſe, *ibid.*

A Grant of a Rent-charge for Life; Proviſo not to charge his Perſon: Yet after the Grantee's Death, his Executors may have an Action of Debt, Page 279

Diſtreſs for Rent muſt be in the Day, for Damage-feaſant Day or Night, 280

Four Cauſes of Diſſeiſin of a Rent-charge, *ibid.*

A Rent-ſeck, what, 281

Demand of a Rent-ſeck muſt be made on the Land, *ibid.*

And if the Tenant deny, or is not ready, or is not there to pay it, it is a Diſſeiſin, and a Writ of Aſſiſe lies to recover it, *ibid.*

The Demand of a Rent-ſeck may be made at the Houſe or on the Land; but on a Condition for Re-entry, it muſt be at the Houſe, *ibid.*

It may be demanded any Time after it is due, *ibid.*

Though Attornment is made, yet if no Seiſin be had, there is no Remedy for it by Law, *ibid.*

Two Cauſes of Diſſeiſin of a Rent-ſeck, *ibid.*

By a Grant of the Reverſion the Rent paſſes, but by a Grant of the Rent the Reverſion will not, *ibid.*

A Rent may be granted by Will in Writing, *ibid.*

Rent on Leaſes at Will, and how recovered; due only by the Occupation, *ibid.*

A Rent may be reſerved by a Bargain and Sale inrolled, 282

A Rent may ariſe out of the Eſtate of *Ceſtuy que Uſe* upon a Recovery, *ibid.*

Remainders of a Rent intailed may be barred by a Recovery, *ibid.*

And a Fine levied of a Rent ſhall bar the Conuſor's own Iſſue, *ibid.*

A Rent will paſs by a Deed of Uſes, *ibid.*

If a Man ſeiſed in Fee of a Rent grants it over, he is without Remedy for the Arrears, 283

Leaſe for Life, Remainder for Life, Remainder in Fee; the Tenant for Life pays not the Rent; the Lord and the Tenant for Life die: The Executors cannot diſtrain on him in Remainder, *ibid.*

Tenant for Life leaſes for Years under Rent, if he dies before Day of Payment, his Tenant is diſcharg'd of the Rent, *ibid.*

But by the 11 *Geo.* 2. the Executor, *&c.* of ſuch Tenant for Life may recover the Whole if he die on the Day of Payment, or if before ſuch Day, then a Proportion, 284

A Rent reſerved on a Leaſe for Years during the Term: By Grant of the Reverſion the Rent is tranſferred, Page 284

Baron and Feme poſſeſſed of a Term for Years; the Baron only aſſigns the Term, rendering Rent to himſelf and Feme; who ſhall have the Rent, ibid.

Covenant lies not for Rent againſt an Aſſignee of Leſſee, who aſſigned before the Rent was due, 3

But it lies againſt Leſſee upon his Covenant, ibid.

Rent ſhall be apportioned in Favour of the Grantee of Part of the Reverſion, ibid.

How a Rent ſhall be apportioned, 4

Debt lies for the Moiety of the Rent againſt the Aſſignee of the Moiety, ibid.

Where an Action of Debt for Rent muſt be laid, 8

If the Leſſor has accepted of his Leſſee's Aſſignee, he cannot have Debt for the Rent, but may have Covenant againſt his Leſſee, ibid.

Acceptance of Rent is ſufficient Notice of the Aſſignment, 9

Tho' Leſſor refuſes to accept Aſſignee as his Tenant, yet he may afterwards charge him in an Action for the Rent, ibid.

A Rent may be reſerved on a Bargain and Sale, 17

Demand of Rent. See *Demand*.

What Remedy when the Rent is arrear, 28

How it is where the Clauſe is, *That if the Rent be behind, the Feoffor ſhall hold the Land till ſatisfied*, ibid.

Where the Profits ſhall be accounted no Part of the Satisfaction, ibid.

Several Rents may be reſerved upon a Demiſe, 98

Leaſe of three Manors, reſerving a Rent out of one of them only; that one is only charged, ibid.

Rendering Rent to a Prior and his Succeſſors is all one, ibid.

Where Rent is reſerved at the uſual Feaſts or thirteen Days after; if it be not paid on the Feaſt-Day, it cannot be ſued for till the thirteen Days after expired, ibid.

A Rent *de novo* granted out of Land, to commence *in futuro* is good, and why, 216

But not good in a Grant of a Rent *in eſſe*, and why, ibid.

The Difference between a Rent *in eſſe* and a Rent *de novo*, 217

There may be a Remainder upon a Rent *de novo* by Deviſe, *Page* 217

A Rent cannot be granted out of a Rent, but a Parcel of a Rent may, ibid.

A Rent granted to the Son by the Father to commence after his Death, is good, 218

A future Intereſt ſhall not have the Rent reſerved upon a former Leaſe, 272

The Rent ſhall go with the Reverſion, ibid.

What Remedy for a Rent that a Man may diſtrain for, where there can be no Diſtreſs, 271

An Action of Debt lies for Arrears of Rent, as well againſt Leſſee for Life as Leſſee for Years, 306

How the Proceedings to be for the Recovery of Rent by the Stat. 8 *Annæ*, ibid.

Where the Leſſee holds over, Payment and Acceptance of Rent amounts to a new Leaſe, ibid.

What Remedy is given for the Recovery of Rent by the Statute of 5 *Annæ*, where Tenants *pur auter vie*, for Years, or at Will, hold over, ibid.

How Diſtreſſes for Rent ſhall be made and ſold, 313

A Rent-charge for Life cannot be confirm'd in Fee, 46

But a Rent-charge in Fee granted for Life, may be confirm'd in Fee, ibid.

If the Grantee of a Rent for Life takes a Leaſe for Years of Part of the Land, and then ſurrenders the Leaſe, the Rent is not thereby ſuſpended, 294

A Rent reſerved out of an incorporeal Inheritance is a Sum in groſs, 320

A Rent is incident to the Reverſion and ſeverable alſo, ibid.

The Statutes for taking Diſtreſſes, more eaſy Recovery of Rents, and preventing Frauds of Tenants, *&c.* 2 *W. & M.* 8 *Ann.* 4 *Geo.* 2. 323, 327

A Rent ſhall ariſe out of the Eſtate of *Ceſtuy que Uſe* on a Recovery, 349

A Rent granted in Conſideration of natural Affection and Money amounts to a Covenant to ſtand ſeiſed, 353

*Repairs.*

Covenant for Repairs, lies againſt Aſſigns, tho' not named in the Leaſe, 3

Covenant to repair Copyhold runs with the Land, 4

Covenant to Repair binds the Leſſee and all claiming under him, *Page* 7

*That the Leſſee ſhall Repair*, amounts to a Covenant, 61

Covenant to Repair, and Leſſor covenants to give Notice to Repair within three Months. *Proviſo* for Non-performance of Covenants, the Leaſe to be void: The ſecond Covenant qualifies the firſt, but the *Proviſo* ſeparates them, 88

Covenant that after Leſſor has repair'd Leſſee will ſuſtain, is conditional, 89

Covenant on a Month's Warning to Repair, and to leave it repair'd: The Clauſe to leave it repair'd is diſtinct, and depends not on the other, *ibid.*

Leſſor putting the Houſe in Repair, Leſſee ſhall keep it ſo, are mutual Covenants, *ibid.*

Covenant to build three Houſes, and to keep them in Repair: The Covenantor builds four: The Covenant to Repair extends to all, 93

Covenant to Repair with a Penalty: Default of Repair by Means of Thunder, Leſſee is excuſed of the Penalty, but muſt Repair, 95

Leſſee covenants to Repair, and after builds a Barn: He muſt keep it in Repair, 100

*Replevin.*

What a Replevin is, 120

*Requeſt.*

If a Man is bound to ſeal a Writing upon Requeſt to him, it is peremptory, and he cannot have Time to conſult his Counſel, 59

Bond to do all reaſonable Acts for Aſſurance, *&c.* as ſhall be required by the Obligee before ſuch a Day: A general Requeſt is ſufficient, 76

Covenant to enfeoff *J. S.* upon Requeſt, and afterwards enfeoffs *J. D.* *J. S.* ſhall have his Action of Covenant without Requeſt, *ibid.*

Covenant to aſſure on Requeſt: A Grant to another before Requeſt is a Breach, 79

*Reſcous.*

What a Reſcous is, 120

What Action lies on a Reſcous of Goods diſtrained for Rent, 326

*Reſtriction.*

Where a reſtrictive Clauſe may be applied to one Sentence or the other, how it ſhall be extended, *Page* 77

Where the laſt Words ſhall not reſtrain the former, 87

If the Grant be good, all ſubſequent Qualifications reſtrain a Covenant in Law, 89

There cannot be any Reſtriction where the Clauſe is not in one intire Sentence, 165

One Part of a Sentence may be reſtrained and expounded by another, 166

Where a particular Covenant ſhall reſtrain a general Covenant, *ibid.*

**Reverſion.** See **Remainder.**

What a Reverſion is, 271

Where a Reverſion, and where a Remainder, *ibid.*

He that hath the Poſſeſſion cannot have the Reverſion, *ibid.*

The two Significations of the Word *Reverſion*, *ibid.*

A Reverſion takes Place after a Remainder; and how it differs from it, *ibid.*

A Reverſion is an actual preſent Intereſt, and the Rent ſhall go with it, *ibid.*

Where ſo much of the Eſtate of the Tenant in Fee as remains in him undiſpoſed of, is called a Reverſion, 272

Where an Action of Waſte doth not lie, nor is there any Attendance, there a Reverſion will paſs without Attornment, *ibid.*

Leſſee for twenty Years leaſes for ten Years, and grants the Reverſion; there muſt have been an Attornment before the Statute of 4 & 5 *Annæ*, *ibid.*

A Reverſion will paſs by Grant and Attornment in the Lives of both Parties, *ibid.*

Likewiſe by Fine, Recovery and Deed to lead the Uſes, 273

Alſo by a Bargain and Sale for Money, *ibid.*

But it muſt be inrolled if of a Freehold, but of a Term it need not, *ibid.*

Where a Fine is levied of a Reverſion, the Conuſee ought preſently after the Conuſance to ſue out a *Quid juris clamat* againſt the Leſſee, *ibid.*

Difference between a Leaſe in Reverſion and a Leaſe of a Reverſion, *ibid.*

A Reverſion will paſs by Covenant to ſtand ſeiſed to Uſes, or by Will in Writing, Page 273

The Leſſor has no Reverſion until the Leſſee enters, ibid.

He who hath a Reverſion in Fee may diſpoſe of it at his Pleaſure, 274

A Grant of a Reverſion during the Life of Tenant in Tail is good, and why, ibid.

Otherwiſe of a Remainder, ibid.

By the Grant of a Meſſuage a Reverſion will paſs; but Lands will not by the Grant of a Reverſion, ibid.

There cannot be any Grant of the Reverſion of an Office; except of an Office of Inheritance, ibid.

A Reverſion may be granted after a Leaſe for Years, or Life, 275

Where the Grant of a Reverſion works as a Grant at the Common Law, there muſt be an actual Poſſeſſion of the Leſſee; where by the Statute of Uſes there needs not, 276

Grantees of Reverſions may take Advantage of Conditions by Statute, ibid.

Actions brought by Reverſioners, and Charges by Tenants in Tail in Remainder, ibid.

Reverſion how pleaded, ibid.

Tenant in Fee makes a Feoffment in Fee, to the Uſe of his Daughter for Life, Remainder to his Son in Tail, Remainder to his own right Heirs: Yet he has a Reverſion, and his right Heirs cannot be in by Purchaſe, 357

A Feoffment to the Uſe of himſelf for Life, Remainder to another in Tail, Remainder to his own right Heirs: The Reverſion is in the Feoffor, 274

Grantee of Part of the Reverſion ſhall not have Advantage of the Condition, but may have the Rent apportion'd, 3

Grantee of a Reverſion cannot take Advantage of a Condition without Attornment, 4

In a Bargain and Sale, the Statute of Uſes executes the Poſſeſſion of the Reverſion without Attornment, 5

Grantee of the Reverſion cannot have Debt againſt the Leſſee, 9

Nor againſt Aſſignee of Leſſee, ibid.

There can be no Reverſion of a Rent *de novo*, 46

But of a Rent *in eſſe* there may, ibid.

How a Reverſion was granted at Common Law, 139

The ſeveral Ways of granting a Reverſion, 190

A Remainder or Reverſion cannot be diſcontinued by any but him to whom the Land is intailed, Page 201

Revocation.

What a Revocation is, 285

A Man ought to be of as good diſpoſing Memory when he revokes his Will or Deed, as when he makes it, ibid.

In the Deed there was only a Power of Revocation, yet a Man may limit new Uſes, ibid.

Though a Man has Power to revoke an Eſtate-tail, he cannot create a Fee out of it, ibid.

Six Things to be obſerved in the Revocation of Uſes, *viz.*

I. That the Revoker is ſeiſed again without Entry or Claim; but not ſo as to bring Treſpaſs without Entry, ibid.

II. That he may revoke Part at one Time, and Part at another, ibid.

III. That by Feoffment in Fee, or Fine of any Part, the Power is extinct *pro tanto*, ibid.

IV. That if he who has Power, has no preſent Intereſt, nor ſhall have by Ceaſer of the Eſtate, a Fine or Feoffment is no Extinguiſhment of his Power, 286

V. That by the ſame Conveyance which revokes the old Uſes, that ceaſe without Entry or Claim, new Uſes may be created, ibid.

VI. That theſe Revocations are favourably interpreted, and why, ibid.

The Revoker is ſeiſed again without Entry or Claim, 285

But cannot bring Treſpaſs without Entry, 286

Revocation may be made of Part at one Time, and Part at another, 285

But one Part can be revoked but once without a new Power of Revocation, ibid.

By Feoffment or Fine of any Part the Power is extinct *pro tanto*, ibid.

If Uſes are to be revoked by Indenture inrolled, a Fine levied before Inrolment extinguiſhes the Power, ibid.

So likewiſe does a Feoffment or Releaſe to the Freeholder in Poſſeſſion, ibid.

If he who has Power of Revocation has no preſent Intereſt, nor ſhall have by *Ceaſer*, a Fine or a Feoffment extinguiſhes not his Power, *Page* 286

By a Conveyance which revokes old Uſes, new Uſes may be created; if the former ceaſe without Entry or Claim, and why, *ibid.*

A Fine or Feoffment may extinguiſh a future Power, *ibid.*

He who hath a preſent or future Power may releaſe it, *ibid.*

A Will may be revoked by Feoffment, Bargain and Sale, *&c.* *ibid.*

Revocations are favourably interpreted, *ibid.*

*A.* levies a Fine to the Uſe of *B.* in Fee for the Payment of his Debts, reſerving a Power to revoke by Indenture; and after covenants to levy a Fine to other Uſes, and does ſo: This is a good Revocation, *ibid.*

And if the Fine had been levied before the Deed had been executed, it had extinguiſhed the Power, 287

Conveyance to the Uſe of himſelf for Life with Remainder over, and Power to revoke: He after levies a Fine, and then by Deed declares new Uſes, and revokes the former: The Fine being levied before the Deed was an Extinguiſhment of the Power, *ibid.*

The Deed and Fine taken together are a good Execution of the Power, and make a Revocation, *ibid.*

If a Man by Indenture declare the Uſes of a Fine with a Clauſe to revoke, and limit new Uſes, he may at his Pleaſure revoke, and declare new Uſes, *ibid.*

But if he reſerves only a Power to revoke, and not to limit new Uſes, he can only revoke, *ibid.*

A Will, without an expreſs Revocation, adjudg'd a good Revocation, 288

Where Uſes are determined and revoked on Tender and Delivery of a Ring, by another Perſon than the Covenantor, an extraordinary Caſe, *ibid.*

Powers of Revocation good by the Statute of Uſes, by *Proviſo*, *&c.* 289

But void as to Purchaſers, *ibid.*

An old Uſe may be revoked, and a new one raiſed at the ſame Time, 345

*Right.*

What a Right is, 257

Why Rights, Titles and Actions may be releaſed, *ibid.*

A Right or Title to a Freehold may be releaſed five ſeveral Ways, whether it be in Poſſeſſion or *in futuro*, *Page* 258

**Settlements on Marriage, &c. See Jointreſs.**

*Statute.*

Statute of 32 *H.* 8. of Aſſignments, explain'd, 1, 2, *&c.*

It extends not to Gifts in Tail, nor to Covenants upon Eſtates in Fee or in Tail, 3

Explication of the Act of 27 *H.* 8. for inrolling Bargains and Sales, 14, 15, *&c.*

The Statute of Inrolments extends to Bargains and Sales of Freeholds only, and not for Years, which are good without Inrolment, 15

Expoſition of the Statute of 32 *H.* 8. *c.* 34. concerning the Remedies, which Grantees and Aſſignees ſhall have againſt Leſſees, *&c.* 33

Statute of Frauds and Perjuries, 29 *Car.* 2. *cap.* 3. *ſect.* 7. That all Declarations of Truſts ſhall be proved by ſome Writing, or by Will, or elſe ſhall be void, 66, *&c.*

*Sect.* 8. Reſulting Truſts, or Truſts by Implication or Conſtruction of Law, ſhall be as if this Act had not been made, *ibid.*

Stat. 4 & 5 *Anna*, For the Amendment of the Law, Reciting that it was doubted ſince the making of 29 *Car.* 2. *cap.* 3. whether Declarations of Uſes and Truſts of Fines and Recoveries, manifeſted by Deed after the levying or ſuffering of ſuch Fines or Recoveries, were good in Law, therefore declared they are good in Law, 66, 69

How Acts of Parliament ſhall be expounded, 166

How an Act of Parliament can be made void, *ibid.*

Expoſition of the Statute 4 *H.* 7. *cap.* 24. concerning the levying of Fines, 196, 197, 198, 199

Expoſition of the Statute 32 *H.* 8. *cap.* 36. for the Expoſition of the Statute of Fines, 199

Expoſition of the Statute 11 *H.* 7. *cap.* 20. of Alienations, *&c.* made by Feme Covert, 230, 231, 232, 234, 235

Some Obſervations on the Statute 2 *W.* & *M.* *cap.* 5. for ſelling of Goods diſtrained for Rent, 323

By the Statute 29 *Car.* 2. *cap.* 3. of Frauds and Perjuries, all Leaſes, *&c.* not put into Writing ſhall be but for Will only, *Page* 314

Expoſition of the Statute 2 *W. & M.* concerning Diſtreſſes for Rent, 322, *&c.*

The Reaſon of making the Statute of 27 *H.* 8. *cap.* 10. For tranſferring of Uſes into Poſſeſſion, 339

Expoſition of the ſaid Statute, 343, 344, 345

*Stranger.*

A Stranger may take Advantage of a void Thing, but not of a Thing voidable, 304

**Surrender.**

What a Surrender is, 290

A Surrender is a Conveyance that works by the Common Law, *ibid.*

If Leſſee for twenty Years takes a Leaſe for ten Years, it is a Surrender of the firſt Leaſe, *ibid.*

But if Leſſee for twenty-one Years takes a Leaſe for forty, to commence at the Death of *J. S.* it is not a Surrender of the firſt Leaſe till *J. S.* dies, *ibid.*

A Parol Surrender is void, *ibid.*

A Right cannot be ſurrendered, *ibid.*

Things required to make a good Surrender by Deed; Eſtate of Surrenderor, *&c.* *ibid.*

There muſt be an Agreement between the Surrenderor and Surrendree; otherwiſe *nil operatur*, *ibid.*

Whether where a Deed of Surrender is made to him in Reverſion in his Abſence, and without his Knowledge, an Agreement be not intended; and whether the Law will not ſuppoſe an Aſſent till his Diſagreement appears, 291

Where a Surrender in Law is of greater Force than a Surrender in Deed, *ibid.*

*A.* leaſes to *B.* for ten Years, and after to another for five, then again to *B.* for ſeven Years; it is a Surrender of the Leaſe for ten Years, 292

If Leſſor mortgage to his Leſſee his Reverſion, and pays not the Money at the Day, the Leaſe for Years is not ſurrendered, but extinct, *ibid.*

Acceptance of a voidable Leaſe is a Surrender of a good Leaſe, *ibid.*

So too is the Acceptance of a void Leaſe, *ibid.*

Acceptance of a new Leaſe of Part is an Avoidance of that Part only, *Page* 292

A Tenant at Will cannot ſurrender, *ibid.*

Leſſee for Years may ſurrender to the Reverſioner for Years, *ibid.*

Leſſee for Years may ſurrender to the Grantee for a Year of the Reverſion, 293

Leſſee for twelve Years cannot ſurrender to Leſſee for ten Years, 292

If Leſſee for twenty Years takes a Leaſe for three Years, to commence ten Years after, it is a Surrender of the whole Term, and why, 293

Leſſee for twenty Years, cannot ſurrender the laſt ten, *ibid.*

If Leſſee of a Manor takes a Leaſe of the Bailiwick, it is not a Surrender, *ibid.*

If the Leſſee of a Houſe takes a Grant of the Cuſtody of the Houſe, it is a Surrender, *ibid.*

If Leſſee for Years takes a Grant of a Rent-charge for Life out of the Land; or if Leſſee for Life takes for Years, it is not a Surrender, *ibid.*

But if Leſſee for Life takes a Rent-charge for Life out of the ſame Land, it is a Surrender, *ibid.*

The Husband may ſurrender the Wife's Leaſe, 294

How to plead a Surrender, *ibid.*

A Surrender may be to a Uſe, *ibid.*

Leaſe for Life, Remainder for Life, Remainder in Tail; if Leſſee ſurrender to him in Remainder in Tail, the Surrender is void, *ibid.*

But if he had been only a Leſſee for Years, and had ſurrender'd with Words that amount to a Grant, it will enure as a Grant, *ibid.*

If Leſſee for Years ſurrender for Years, it cannot take Effect as a Surrender, *ibid.*

If a Woman having Title of Dower ſurrenders to the Tenant, it is void, 295

A Surrender of a Leaſe or Freehold made upon Condition, is good, *ibid.*

Leſſee for Years may ſurrender to him in Reverſion by Releaſe; but Tenant for Life muſt releaſe, *ibid.*

Grant of Tenant for Life to him in Reverſion, is a Surrender, *ibid.*

If Leſſor enfeoff another in the Preſence, and with the Conſent of the Leſſee, it is not a Surrender, *ibid.*

Where

Where Leſſee makes Livery by Letter of Attorney, it is no Surrender of his Term, Page 295

Where a Surrender ſhall enure as a Grant, ibid.

Tenant for Life, Remainder to his firſt Son, Remainder to *B.* in Tail: Tenant for Life before the Birth of the Son ſurrenders to *B.* Whether this ſhall be a good Surrender? ibid.

Chief Leaſes of Tenants for Life, *&c.* may be ſurrendered, without ſurrendering the under Leaſes, 296

## Tenant for Life.

WHO is a Tenant for Life, 297

He is puniſhable for Waſte, and may commit a Forfeiture, ibid.

If Tenant for Life be abſent for ſeven Years, and no Account can be given of him, he ſhall be taken to be dead, 298

But if he after returns or appears to be living, he ſhall recover the Profits with Intereſt, ibid.

And Perſons in Remainder after the Death of another, may have an Order to have him produc'd; or to be view'd by Commiſſioners, if abroad, ibid.

What Privileges the Law gives to a Tenant for Life, ibid.

A Leaſe for Life to commence *in futuro*, is void, and why, 299

Where a Leaſe for Life is made, *Habendum* at a Day to come, and the Leſſor makes Livery after the Day, it is void, ibid.

A Man may have an Eſtate for his own and another Man's Life, 300

A Leaſe to *A.* during the Lives of *B.* and *C.* and ſays not, *Of the Survivor*; yet if one dies, the Eſtate of *A.* is not determined, ibid.

A Leaſe for 100 Years if *B.* and *C.* ſo long live, is conditional, and when either dies it is gone: But if *during* the Lives of *B.* and *C.* it is not gone by the Death of one of them, ibid.

A Demiſe to *A.* and his Heirs, *Habendum* to him and his Heirs for three Lives; It is for three Lives as in the *Habendum*, ibid.

To *A.* and his Aſſigns, *Habendum* to him during his Life, and the Lives of *B.* and *C.* Here is no Merger of the Lives of *B.* and *C.* for the Leſſee hath but one Eſtate by one Deed, 301

How to plead a Leaſe for Life, ibid.

What Intereſt Leſſee for Life hath in the Trees, Page 301

Tenant for Life without Impeachment of Waſte, cuts down Timber-trees, the Reverſioner ſhall have them, 302

Leſſee for Life may cut down Coppices, but muſt take Care to fence them, 303

But he may not cut down Pollards which have Timber in them, ibid.

How a Tenant for Life may commit a Forfeiture, and who may take Advantage of it, 304

If Tenant for Life makes an Eſtate upon Condition, and enters for the Breach, he ſhall be Tenant for Life again, but ſubject to the Forfeiture, ibid.

If Tenant in Fee makes a Leaſe for Life, it ſhall be conſtrued to be the Life of the Leſſee; but otherwiſe where Tenant in Tail makes one, 305

Tenants in Tail may make Leaſes for three Lives or twenty-one Years, on certain Conditions by Statute, ibid.

And bind the Iſſue in Tail, but not him in Remainder, ibid.

Leaſes by a Husband of the Wife's Land, how to be made, ibid.

A Leaſe to Baron and Feme for their Lives, Remainder to the Executors of the Survivor: The Husband grants away the Term, and dies; this ſhall not bar the Wife, 306

Tenant for Life, Remainder in Tail, Remainder in Tail; Tenant for Life and the firſt Remainder in Tail join in a Fine: This is no Forfeiture, and why, ibid.

Tenant for Life, Remainder in Tail, Remainder in Fee; Tenant for Life enfeoffs the Reverſioner in Fee: This is a Forfeiture, becauſe it deveſts the Eſtate-tail in Remainder, ibid.

So likewiſe where he in Remainder in Tail enfeoffs the Reverſioner, ibid.

There is no Difference when an Eſtate for Life is created by the Law or by the Party, 358

For there being no Eſtate limited to him, the Law creates an Eſtate for Life, ibid.

A Feoffment to the Uſe of the Heirs of his Body is an Eſtate for Life in the Feoffor, ibid.

How it is where an Eſtate for Life is limited by the ſame Conveyance, and where they are firſt Tenants for Life, and one gets the Fee, 263

Leaſe for Life, and if Rent be behind to re-enter; Grantee of the Reverſion may enter for Condition broken, by Statute 32 *H.* 8. *Page* 2

Tenant for Life ſhall not alien, nor commit a Forfeiture, 37

A Leaſe to *A.* for Life, Remainder to *B. in Forma prædicta,* is a Leaſe for Life to *B.* 166

An Eſtate for Life upon Condition is a Bar of Dower, if the Wife accepts it, 234

Tenant for Life leaſes for twenty-one Years, and covenants that he hath done no Act to prejudice the Leaſe, but that the Leſſee ſhall enjoy againſt all Perſons: The Words *But that he ſhall enjoy,* &c. refer to the Words *For any Act done by him,* &c. 78

A Leaſe to *B.* for his Life, *Habendum* to him and his Aſſigns for the Lives of *C. D.* and *E.* He hath an Eſtate for four Lives, and it doth not determine upon his Death, but there will be an Occupancy, 227

*A.* ſeiſed in Fee, leaſes to *B. Habendum* to *C.* and alſo to *D.* for their Lives, and the Life of the longeſt Liver: *A.* only can take, he being the only Party to the Deed: The Reſt being named only in the *Habendum,* cannot take but by Way of Remainder, and that they cannot do here for Incertainty, 228

A Leaſe to *A.* and his Aſſigns, *Habendum* to him during his Life, and the Lives of *B.* and *C.* Here is no Merger of the Lives of *B.* and *C.* for the Leſſee hath but one Eſtate by one Deed, 301

A Leaſe for Life, or Years, and a Releaſe of all Right, *&c.* without the Word *Heirs,* is but an Eſtate for Life: But a Releaſe to the Leſſee and his *Heirs* is an Eſtate of Inheritance, 241

*Tenant by Statute.*

If the Conuſor interrupts the Tenant by Statute or *Elegit,* he ſhall hold over, 355

**Tenant at Sufferance.**

Who is a Tenant at Sufferance, 307

He is a Tenant without Agreement, and is made by the Laches of his Leſſor, *ibid.*

Leſſor cannot bring Treſpaſs againſt Tenant at Sufferance till Entry, *ibid.*

What may admit a Man to be Tenant at Sufferance, and not Tenant at Will, *ibid.*

Where Tenant at Sufferance ſows, who ſhall have the Corn, *Page* 307

The Owner of the Land hath no Right to it till actual Entry, *ibid.*

If Tenant at Sufferance makes a Leaſe for Years, it is a Diſſeiſin, 308

If he grant a Copyhold Eſtate, it is void, *ibid.*

An Intruder cannot be Tenant at Sufferance, and why, *ibid.*

A Releaſe to a Tenant at Sufferance is void, *ibid.*

Where Tenant for Life becomes Tenant at Sufferance, *ibid.*

Deviſe for Life upon Condition that the Eſtate of the Deviſee ſhall ceaſe upon Breach; he continues the Poſſeſſion; he is but Tenant at Sufferance, *ibid.*

Where Tenant at Sufferance becomes Tenant at Will, 310

A Releaſe will not enure to Tenant at Sufferance for Want of Privity, 241

**Tenant at Will.**

Who is a Tenant at Will, 309

He hath no Eſtate till actual Entry, *ibid.*

He may hold by Parol, or by Writing, *ibid.*

Every Leaſe at Will muſt be at the Will of both Parties, *ibid.*

When the Leaſe is made to hold at the Will of the Leſſor, the Law implies the Will of the Leſſee alſo, *ibid.*

If Leſſee at Will ſows the Corn, he ſhall reap it, tho' the Leſſor puts him out before it is ripe, *ibid.*

Tenant at Will ſows and then determines his Will, the Leſſor ſhall have the Corn, *ibid.*

Who ſhall have the Corn when the Leaſe determines by the Act of the Leſſee, *ibid.*

Who ſhall have the Graſs after Tenant at Will is turned out, 310

Where Tenant at Will ſhall be Tenant at Sufferance, *ibid.*

If the Tenant at Will determines his Will in Part of a Quarter, he ſhall pay for the whole Quarter, *ibid.*

No Tenancy at Will againſt the King, *ibid.*

What Words will determine the Will, *ibid.*

What is an expreſs Ouſter of Tenant at Will, *ibid.*

What is an implied Ouſter, *ibid.*

A Woman leaſes at Will, and marries: This is no Countermand of the Leaſe, *Page* 311

Nor when a Leaſe at Will is made to a Woman who marries, *ibid.*

A Leaſe at Will is made by Two to Two: If one either of the Leſſors or Leſſees die, the Leaſe is not determined, *ibid.*

If the Grantee of Tenant at Will enters, he becomes a Diſſeiſor, and why, *ibid.*

Entry by Conſent of the Owner is a Tenancy at Will, *ibid.*

Tenant at Will leaſes for Years; this is a Diſſeiſin at the Election of the Parties, *ibid.*

Payment of Rent makes a good Tenancy at Will, *ibid.*

Where the Feoffor becomes Tenant at Will, *ibid.*

What ſhall make a Mortgagor Tenant at Will to the Mortgagee, *ibid.*

Diverſity where the Eſtate of Tenant at Will determines by his own Act, or by the Act of God, 312

Where Tenant at Will becomes Tenant at Sufferance, *ibid.*

A Leaſe from Year to Year, ſo long as both Parties pleaſed; the Leſſee occupied two Years and Part of the Third, and then died: It is a Leaſe certain for that third Year; and cannot be determined by the Will of either Party, *ibid.*

Tenant at Will is not to repair, but muſt not commit voluntary Waſte, *ibid.*

If he do, Treſpaſs lies againſt him, *ibid.*

No Remedy againſt him for permiſſive Waſte, *ibid.*

If Rent is arrear upon a Leaſe at Will, the Leſſor may diſtrain or bring Debt for it at his Pleaſure, 313

In Debt for Rent the Occupation of the Tenant at Will muſt be averred, *ibid.*

Where the Leſſee at Will may plead that the Reverſion is granted away, *ibid.*

Outlawry of the Leſſor is no Determination of the Will, until a Seiſure; nor an Extent till a *Liberate*, *ibid.*

How Diſtreſſes for Rent due from Tenant at Will ſhall be made and ſold, by Statute 2 *W. & M. Seſſ.* 2. *cap.* 9. and by 8 *Annæ*, *ibid.*

If Tenant at Will on Ouſter by a Stranger re-enters, he continues Tenant, 124

If the Leſſee of Tenant at Will be the Diſſeiſor, a Releaſe to Tenant at Will is void, *ibid.*

## Tenant for Years.

What a Tenant for Years is, *Page* 314

The Leſſor ought to be in Poſſeſſion to deliver it upon the Land, *ibid.*

Where the Leſſee for Years may plead that the Leſſor *Nil habuit in Tenementis, &c.* *ibid.*

Leaſes for Years not put into Writing ſhall be but for Will only, *ibid.*

Excepting Leaſes not exceeding three Years, *ibid.*

Till the Leſſee enters he hath but an *Intereſſe Termini*, *ibid.*

How is it where the Leaſe is by Bargain and Sale for Years, *ibid.*

Three Principals in every Leaſe, and what they are, 315

In every Leaſe for Years the Term muſt have a certain Beginning and a certain Ending, *ibid.*

A Leaſe without a certain Beginning is void, *ibid.*

The Years muſt be certain when to take Effect, *ibid.*

But a Leaſe for Years may be made upon a Contingency, or a Condition precedent, *ibid.*

Leaſe from Year to Year is good for two Years, *ibid.*

A Leaſe for a Year, & *ſic de anno in annum*, is for three Years, *ibid.*

A Leaſe for Years is for two Years, *ibid.*

As to the Commencement of Leaſes, the Law will conſtrue them moſt ſtrongly againſt the Leſſor, *ibid.*

A Leaſe cannot commence from the Death of another, but a Demiſe may, *ibid.*

When a Leaſe for Years to commence after the Surrender, Forfeiture, &c. of a former Leaſe ſhall begin, 316

Although there appears no Certainty of Years in the Leaſe, yet if it can be made certain, it ſufficeth, *ibid.*

How the Term may be aſcertained, *ibid.*

An incertain Leaſe may be good when reduced to a Certainty, *ibid.*

In Leaſes there cannot be one Contingency upon another, *ibid.*

The Day of the Delivery ſhall be incluſive, *ibid.*

So likewiſe from the Day of the Making, *ibid.*

But from the Day of the Date ſhall be excluſive, *Page* 316

A Leaſe dated the firſt of *May*, *Habendum* from the Day of the Date, ſhall commence the ſecond of *May*, *ibid.*

If a Leaſe be dated 1 *Maii*, *Habendum* from the Making, or Day of the Making, it ſhall begin upon the Day of the Delivery, *ibid.*

A Leaſe for twenty Years to commence at the Death of *J. S.* is good, *ibid.*

A Leaſe to commence when *J. S.* ſhall be dead without Heirs, is void, 317

But to commence when *J. S.* ſhall be dead without Iſſue is good, *ibid.*

A Leaſe for Years may commence *in futuro*, but not a Leaſe for Life, *ibid.*

A Leaſe for eighty Years, if *H.* lives ſo long, determines by his Death, *ibid.*

But to *B.* for ſo many Years as ſhall remain after the Death of *A.* is void, and why, *ibid.*

Diverſity between *tot annis* of the eighty Years, and *durantibus tot annis* of the eighty, *ibid.*

A Leaſe for twenty-one Years, and after that another Leaſe to commence from the End of that Term; the firſt Leaſe is ſurrendered, and the ſecond ſhall commence preſently, *ibid.*

But otherwiſe had it been to commence from the End and Expiration of twenty-one Years, *ibid.*

A Leaſe to commence after the Determination of a Leaſe in Being, and there is no Leaſe in Being; it commences preſently, *ibid.*

A Leaſe for twenty-one Years rendring Rent, and alſo another Leaſe the ſame Day for twenty-one Years rendring Rent, the ſecond Leaſe is void, 318

But if the ſecond Leaſe be by Indenture it is an Eſtoppel to the Leſſor, *ibid.*

By the Grant of a Term the Eſtate and Intereſt for Years paſſes, *ibid.*

A Leaſe for Life, and afterwards for Years, when the Leſſee for Years ſhall have it, *ibid.*

Leaſe for eighty Years, if the Leſſee ſo long live: Another Leaſe for eighty Years, if, *&c.* when the ſecond Leſſee ſhall have the Land, *ibid.*

Leaſe for two Years if *A.* ſhall ſo long live, or continue Parſon of *B.* is good, *ibid.*

But if it be for ſo many Years as *A.* ſhall live, or continue Parſon of *B.* it is void, *ibid.*

*A.* poſſeſſed of a Term of forty Years, grants to *B.* ſo many of the Years as ſhall be to come at the Time of his Death; this is void, *Page* 318

But if it be *Habendum* for twenty Years after the Death of the Leſſor, it is good, *ibid.*

A Leaſe for Life, *Proviſo*, that if the Leſſee died within ſixty Years, his Executors ſhould have it for ſo many of the ſixty Years as ſhould be to come at his Death: This is but a Covenant, *ibid.*

A Licence to enjoy for a Time is a good Leaſe, *ibid.*

A Leaſe for Years ſhall be taken moſt ſtrongly againſt the Leſſor, 319

The Form of a Leaſe for Years, *ibid.*

Articles may amount to a Leaſe, *ibid.*

A Leaſe for Years may be without Conſideration; but if there be a Conſideration it will amount to a Bargain and Sale, *ibid.*

Leſſee is not Tenant till Entry, but Leſſor may releaſe the Rent to him, *ibid.*

If Leſſee for Years be evicted, he may bring Covenant upon the Word *Demiſe*, *ibid.*

Leſſee for Years may enter after the Leſſor's Death, *ibid.*

But till Entry he hath only an *Intereſſe Termini*, *ibid.*

How the Commencement of a Leaſe is to be, 320

*Habendum* from the Making, when it ſhall commence, *ibid.*

When, where it is to begin from the Delivery, *ibid.*

When, where the Date is impoſſible, *ibid.*

When, where it is to commence after a former Leaſe, which is void or miſ-recited, or there is not any ſuch Leaſe, *ibid.*

Leſſor cannot reſerve Rent to any but himſelf, *ibid.*

Rent reſerved out of any Incorporeal Inheritance is a Sum in Groſs, *ibid.*

Where the Reſervation is to the Leſſor and his Heirs, and where it is rendring Rent generally, to whom it ſhall go, *ibid.*

If a Rent be reſerved *to him and his Aſſigns*, it determines with his Death, *ibid.*

But otherwiſe if the Words *during the Term* be in, *ibid.*

If it be *to him and his Executors*, it ſhall end with his Death, *ibid.*

Tenant in Fee leaſes for Years, rendring Rent *to him, his Executors, Adminiſtrators and Aſſigns, during the Term*: Then he de-

viſes the Reverſion; the Deviſee brings Covenant for the Rent, and recovered it as Aſſignee, *Page* 320

Which is the ſureſt way to reſerve the Rent, 321

The Huſband poſſeſſed of a Term for Years in Right of his Wife, may diſpoſe of it during his Life; and if he ſurvives her he has it: But if his Wife ſurvives, and he has made no Diſpoſition of it, it remains to her, *ibid.*

Baron made a Leaſe of his Wife's Eſtate, to commence after his Death: He died and his Wife ſurvived him; but held a good Leaſe, *ibid.*

Baron poſſeſſed of a Term for forty Years in Right of his Wife, makes a Leaſe for twenty Years: The Wife ſhall have the remaining twenty Years, *ibid.*

The Huſband cannot by his Will diſpoſe of his Wife's Term, *ibid.*

Where they muſt join in a Leaſe of the Wife's Land, *ibid.*

How it is where the Tenant for Life and he in Remainder in Fee join in a Leaſe for Years, *ibid.*

The Rent reſerved upon a Leaſe for Years may be apportioned, 322

Goods how diſtrained for Rent on Leaſes, and ſold for Payment, *&c.* by Statute 2 *W. & M.* 323

Diſtreſſes may be taken for Rent off the Premiſſes, and after the Leaſe determined, by 8 *Anna*, 327

Action of Debt lies for Rent on a Leaſe for Life, *ibid.*

Tenants for Life or Years, holding over Lands after the End of their Terms, to pay double the yearly Value, recoverable by Action, by 4 *Geo.* 2. *c.* 28. 328

On half a Year's Rent in arrear the Leſſor may ſerve a Declaration in Ejectment againſt the Tenant, and recover Judgment, *&c. ibid.*

But the Tenant may file a Bill in Equity to be reliev'd, and paying Rent hold his Leaſe, *ibid.*

Landlords may diſtrain and ſell Goods fraudulently carried off the Premiſſes, by 11 *Geo.* 2. 329

Unleſs ſold to any Perſon not privy to the Fraud, *ibid.*

Penalty on the ſaid Fraud, or aſſiſting thereto, *ibid.*

If the Goods exceed not the Value of 50 *l.* Landlords to have recourſe to two Juſtices, *ib.*

Appeal from them to the Quarter-Seſſions, *Page* 329

The two Juſtices Order on ſuch Appeal not to be executed, *ibid.*

Landlords may break open Houſes to ſeiſe Goods fraudulently ſecured therein, *ibid.*

And may diſtrain Stock or Cattle on the Premiſſes for Arrears of Rent, 331

Tenants to have Notice of the Place where the Diſtreſs is lodged, *ibid.*

Diſtreſs of Corn to ceaſe, if Rent be paid before it be cut, *ibid.*

Diſtreſſes may be ſecured and ſold on the Premiſſes, 332

Attornment of Eſtates by Tenants void, *ibid.*

Exceptions, *ibid.*

Againſt Tenants ſecreting Ejectments, *ibid.*

Landlord impowered to make himſelf Defendant by joining with the Tenant, *ibid.*

Rents, how to be recovered where the Demiſes are not by Deed, 333

Rents recoverable from Under-tenants, and apportioned where Tenant for Life dies before the Leaſe is expired, *ibid.*

Proviſion for Landlords where Tenants deſert the Premiſſes, *ibid.*

Tenants may Appeal from the Juſtices, 334

Tenants holding the Premiſſes after the Time they notify for quitting them, to pay double Rent from ſuch Time, *ibid.*

Diſtreſſes for Rent not unlawful for any Irregularity in the Diſpoſition of them, *ibid.*

Nor Tenants to recover by Action on Tender of Amends, 335

In Actions againſt Perſons intitled to Rents, the Defendants may plead the General Iſſue, *ibid.*

Defendants in Replevin to make Conuſance, that the Plaintiff held the Premiſſes at a certain Rent, *ibid.*

To prevent vexatious Replevins, *ibid.*

Where a Man hath Authority to make a Leaſe for Years, he muſt do it in the Name of him who gave the Authority, 336

But Executors who have Authority to ſell, muſt ſell in their own Names, becauſe he who gave the Authority is dead, *ibid.*

How a Leaſe by Attorney is to be made, *ibid.*

The Form of a Leaſe made by Attorney, *ibid.*

Leſſee for Years leaſeth Part of the Term, and after bargains and ſells the Reverſion of

it to another, without Attornment: The Grantee can neither diſtrain nor bring Debt for the Rent, *Page* 12

Such preciſe Words are not required in Caſe of a Leaſe for Years as of a Freehold, 29

A Leaſe for Years ſhall not be void for Non-payment of Rent, without an actual Demand, 33

If Tenant for Years covenants not to aſſign on Pain of Forfeiture, he hath a conditional Eſtate, 66

Leaſe for Years rendring Rent: *Proviſo* if in arrear, to enter: If Leſſor demands the Rent, and it is not paid, and after accepts it before Re-entry, he diſpenſes with the Condition, 99

Leſſee for ninety-nine Years demiſes for twenty Years to commence from his Death, the Leſſor dies: Held a good Leaſe, and why, 221

A Leaſe for forty Years, *Habendum* after the Expiration of a Leaſe made to *J. S.* and there was no ſuch Leaſe: The Leaſe for forty Years ſhall commence preſently, 228

If the Grantee of a Rent for Life take a Leaſe for Years of Part of the Land, and ſurrenders the Leaſe, the Leaſe is abſolutely determined as to the Leſſor and Leſſee, 294

But it is *in eſſe* as to Strangers, *ibid.*

A Leaſe for an hundred Years if *B.* and *C.* ſo long live, is conditional; and when either dies, it is gone: But if it be *during* the Lives of *B.* and *C.* it is not gone by the Death of one of them, 300

A Leaſe to Baron and Feme for twenty Years, if they or any Child between them to be begotten ſhall ſo long live; and one of them died; yet the Leaſe ſhall endure as long as any of the Perſons named in the *Proviſo* ſhall live, *ibid.*

A Leſſor ſeiſed in Fee, to make a Leaſe for Years, muſt give Poſſeſſion, or raiſe an Uſe, 236

Leaſe for Years without Conſideration: The Leſſee hath no Eſtate till Entry, nor the Leſſor any Reverſion, 237

How to aſſign a Term for Years, 1

Grantee for Years of a Reverſion of a Leaſe for Years may take Benefit of a Condition, 3

Leſſee for Years grants Part of his Term; and after bargains and ſells the Reverſion: It veſts not in Grantee without Attornment, *ibid.*

But if Grantee ſeiſed in Fee, in Conſideration of Money bargains and ſells for Years, the Statute of Uſes veſts the Poſſeſſion, without Attornment, *Page* 3

What Privileges the Law gives a Tenant for Years, 298

When Tenant for Years ſows the Corn which grows not ripe before the Term ends, he cannot come afterwards to cut and carry it away, 309

Where Tenant at Sufferance becomes Tenant at Will, 310

*Tender.*

How Tender of Money may be made, 30

How it is when the Tender is made, and the Feoffee refuſeth to receive it, *ibid.*

How it is where Money is tender'd upon a Bond, *ibid.*

How it is upon Tender on a ſingle Bond, or a Statute without Condition, *ibid.*

A Feoffment upon Condition, That the Feoffor ſhall have the Land upon Payment of Money, who may tender the Money, and how it is if it be refuſed, 31

When the Condition is, That if the Feoffor pay to the Feoffee; and the Feoffor dies before Payment, the Heir cannot tender afterwards, *ibid.*

Where no Place is appointed, the Tender muſt be to the Perſon, *ibid.*

How the Tender to be when the Condition is for the Delivery of Corn, or other Things, 32

The Uncle covenants with his Nephew for Advancement of his Blood, to ſtand ſeiſed to the Uſe of himſelf for Life, and the Nephew in Tail: Proviſo the Uſes to be void on Delivery of a Ring by himſelf or other Perſon: He was afterwards attainted of Treaſon, and the Queen by Letter of Attorney tenders the Ring to the Nephew: This is a ſufficient Tender, and determines the Uſes, 288

*Treſpaſs.*

Bargainee cannot bring Treſpaſs before Entry, 17

But Tenant by Statute or *Elegit* may, *ibid.*

*Truſts.* See *Uſes.*

A Termor, in Conſideration of natural Affection, and for raiſing Portions, aſſigns in

Truſt for himſelf for Life, and after to raiſe 500 *l.* with Proviſo during Life to alter and create new Uſes: He after is attainted of Treaſon; adjudg'd that the Truſt was not forfeited, *Page* 288

Truſts ought not to be carried beyond the Bounds of Uſes, 341

Perpetuities in Truſts are as inconvenient as in other Eſtates, *ibid.*

There muſt be Privity of Eſtate and Confidence in him who is ſeiſed to an Uſe, 343

Truſts and Confidences are either expreſſed or implied by Law, *ibid.*

By the Statute of 27 *H.* 8. an Uſe by the Name of a Truſt remains ſeparate in ſome Perſons, and the Poſſeſſion ſeparate in others, 345

How a Truſt and an Uſe differ, *ibid.*

The Word *Truſt* is proper to limit an Uſe, unleſs the Eſtate be firſt limited to the Uſe of one in Truſt, *ibid.*

All Declarations and Creations of Truſts and Confidences, of any Lands, Tenements or Hereditaments, muſt be manifeſted and proved by ſome Writing, executed by the Party who is by Law enabled to declare ſuch Truſt, 365

The Statute of Frauds and Perjuries leaves reſulting Truſts, and Truſts by Implication, as they were before, *ibid.*

All Declarations or Creations of Uſes, Truſts or Confidences, of any Fine or Recovery, by any Deed made after the levying or ſuffering ſuch Fine or Recovery, ſhall be good, by Stat. 4 & 5 *Anna*, *ibid.*

All Grants and Aſſignments of Truſts ſhall be in Writing, ſigned by the Party granting or aſſigning the ſame, otherwiſe they are void, *ibid.*

Infants, and Ideots and Lunaticks, ſeiſed or poſſeſſed of Eſtates in Truſt, *&c.* are enabled to make Conveyances thereof by Order of the Chancery, by Statute 7 *Annæ*, and 4 *Geo.* 2. 366

### Uſes.

USES veſt without Attornment by the Statute of Uſes, 5

In a Bargain and Sale the Statute executes the Poſſeſſion of the Reverſion without Attornment, *ibid.*

A Bargain and Sale veſts the Uſes, and the Statute of Uſes the Poſſeſſion, 17

An Uſe cannot be raiſed by any Conſideration but Love and Affection, *Page* 21

Uſes are to be conſtrued according to the Common Law, *ibid.*

Covenant upon Marriage to levy a Fine to Uſes, and no Fine was levied: No Uſe ſhall ariſe, 65

Uſes and Deviſes are favoured alike, 40

Feoffment to the Uſe of ſuch Perſon, and of ſuch Eſtate as he ſhall appoint by his Will: The Uſe veſts in the Feoffor, till declared, 117

How to declare an Uſe upon a Feoffment, 176

How it is when no Uſe is mentioned in the Feoffment, *ibid.*

Where the Uſe ſhall be void, and the Land return, *ibid.*

Difference between Uſes raiſed by Feoffment and by Covenant, *ibid.*

How it is when the Uſes are raiſed by Feoffment, *ibid.*

How when by Recovery, Bargain and Sale, or Covenant to ſtand ſeiſed, 177

When the Uſes not diſpoſed of ſhall remain to the Covenantor, to ſerve the contingent Uſes, *ibid.*

The Difference between Uſes declared upon an Eſtate executed, and where by Covenant to ſtand ſeiſed, 178

An Uſe cannot be limited to ariſe out of the Seiſin of a Stranger, who took nothing by the Deed, 217

Where the Deed is void no Uſe can ariſe, 218

An Uſe muſt be raiſed out of the Land, and united to it, before a Rent can reſult out of it, 237

The Word *Grant* will make Land paſs by way of Uſe, *ibid.*

Reſervation of a Pepper-Corn is a good Conſideration to raiſe an Uſe, *ibid.*

The Words *Bargain and Sell*, or *Demiſe*, in Conſideration of Money, will raiſe an Uſe, 238

The Conſideration of Money on a Bargain and Sale raiſes a Uſe without reſerving a Rent; but in a Leaſe a Rent muſt be reſerved, *ibid.*

The Conſideration Money muſt be proved on Trial, 240

Feoffment or other Conveyance without Conſideration, not ſaying to whoſe Uſe, it ſhall be to the Uſe of the Feoffor, 242

A Man may take a Remainder by Way of Uſe, *Page* 263

A Man covenants to ſtand ſeiſed to the Uſe of his Son, Remainder to *J. S.* a Stranger: No Uſe ariſes to *J. S.* becauſe there is no Conſideration, 264

Nor can it ariſe upon a Bargain and Sale inrolled, becauſe he is no Party to the Deed, *ibid.*

But by Leaſe and Releaſe it will paſs upon a good Conſideration, *ibid.*

*Divers good Conſiderations* will not raiſe an Uſe, 177

Conſideration of Blood muſt be averred to raiſe an Uſe upon a Covenant to ſtand ſeiſed, 348

A Deſcription of Uſes and the Original of them, 338, 339

The Antiquity of Uſes, 338

As long as Wills and Marriages have been, Truſts and Confidences have been, *ibid.*

*Ceſtuy que Uſe* was to be ſworn on Enqueſts by the Common Law, *ibid.*

Formerly none purchaſed Land to himſelf alone, but with other joint Feoffees; and the Uſe was known by the Occupation, *ibid.*

Why no Mention of Uſes is made in our ancient Books, *ibid.*

Before the Statute of *Marlbridge*, a Feoffment in Fee made without any Uſe declared, was to the Uſe of the Feoffee, *ibid.*

That Uſes began about 18 *Edw.* 2. 339

And came into common Practice in the Time of *H.* 6. *ibid.*

But afterwards became miſchievous, and why, *ibid.*

The Reaſon of making the Statute of 27 *H.* 8. *cap.* 10. For transferring of Uſes into Poſſeſſion, *ibid.*

That Uſes began preſently after the Statute of 27 *Edw.* 1. of Mortmain, 340

When the Words *Behoof* and *Uſe* were firſt uſed in our Law, *ibid.*

*Ceſtuy's que Uſe* might juſtify maintaining their Feoffees, *ibid.*

In all Conveyances the two chief Things to be reſpected are the Form and the Effect, *ibid.*

And where the Form and the Effect cannot ſtand together, the Form ſhall be rejected, and the Effect ſhall ſtand, *ibid.*

An Uſe hath obtained the Name of an Inheritance, 341

An Uſe cannot be limited to Pariſhioners no more than Land, *ibid.*

The Statute of 27 *H.* 8. deveſts all out of the Feoffees, but not before the Uſe is veſted, *Page* 342

The Veſting of the Uſe ought to precede the Execution of the Poſſeſſion to it, *ibid.*

What an Uſe now is, 343

Truſts ought not to be carried beyond the Bounds of Uſes, 341

Perpetuities in Truſts are as inconvenient as in other Eſtates, *ibid.*

At the Common Law *Ceſtuy que Uſe* had neither *Jus in re* nor *Jus ad rem*, nor any Remedy, *ibid.*

But his only Remedy was in Chancery, 342

But now the Statute 27 *H.* 8. *cap.* 10. transfers the Poſſeſſion to the Uſe, *ibid.*

Queſtions ariſing on Lands conveyed to Uſes muſt be decided by the Judges, *ibid.*

The Intention of the Parties muſt be obſerved in the Creation of Uſes, but when they are created they muſt be governed by the Rules of Law, 341

How Uſes are now to be conſtrued, *ibid.*

Before the Statute of Uſes, no Uſes could ariſe on a Feoffment to Uſes without Livery, *ibid.*

An Uſe ſhall not be greater than the Eſtate, *ibid.*

An Uſe cannot be raiſed out of a Poſſibility, *ibid.*

Nor out of an Uſe, Way, or Common, 342

Uſes ſhall never ariſe on precedent Contingencies, which are either impoſſible, or againſt Law, *ibid.*

Uſes limited without Conſideration are void, *ibid.*

Covenant to ſtand ſeiſed: All the Uſes undiſpoſed of remain in the Covenantor, *ibid.*

Uſes remaining to the Feoffor, when and when not, on a Feoffment, *ibid.*

And how on a Fine or Recovery, *ibid.*

Uſes were but in Equity before the Statute, and not much reſpected in Law, *ibid.*

An Uſe of Land, which is but the Pernancy of the Profits, is no new Thing, but Part of that which the Owner of the Land had, *ibid.*

There muſt be Privity of Eſtate in him who is ſeiſed to an Uſe, 343

The King, nor an Alien, a Corporation, a Perſon attainted, nor a Tenant in Tail, can be ſeiſed to an Uſe, *ibid.*

An Uſe may be limited upon a Releaſe which creates an Eſtate, *Page* 343

But not a Releaſe or Confirmation, which enures by Way of *Mitter le droit*, *ibid.*

Fear and Fraud were the Inventors of Uſes, *ibid.*

There are two Sorts of Uſes, 1. Uſes *in eſſe*. 2. Uſes in Contingency, *ibid.*

Confidence in the Perſon and Privity in Eſtate are inſeparable Incidents to all Uſes, *ibid.*

The Confidence and Privity may either be expreſſed or implied by Law, *ibid.*

The 27 *H.* 8. was made for remedying Abuſes in Uſes, *ibid.*

There are ten Miſchiefs and Abuſes contained in the Preamble of that Act, *viz.*

I. Feoffments, Fines, *&c.* to Uſes without Livery, *ibid.*

II. Wills by Parol, and Signs, 344

III. Heirs were unjuſtly diſinherited, *ibid.*

IV. Lords loſt their Wards, Reliefs, *&c.* *ibid.*

V. Purchaſors could not be ſafe, *ibid.*

VI. None knew againſt whom to bring their Actions, *ibid.*

VII. Tenancies in Dower and by Curteſy were defeated, *ibid.*

VIII. Perjuries were committed, *ibid.*

IX. The King loſt his Eſcheats, Purchaſes of Aliens, *&c.* *ibid.*

X. Lords likewiſe loſt their Eſcheats, *ibid.*

For Remedying of which Miſchiefs the Body of the ſaid Act provides, That every Perſon who has any Uſe ſhall be adjudged in Poſſeſſion of the Land, and of ſuch an Eſtate as they had in the Uſe, *ibid.*

Lands may be deviſed to one to the Uſe of another, *ibid.*

Uſes in Contingency, not executed by the Statute, the Fee is in the Feoffor, *ibid.*

Where an Uſe is ſaid to be in Contingency, *ibid.*

No Poſſeſſion is executed but where an Uſe may ariſe by Common Law, *ibid.*

The Intent of the Statute was to join the Uſe and the Poſſeſſion, where either of them were ſeverally in one or more ſeparate Perſons, 345

An Uſe by the Name of a Truſt remains ſeparate in ſome Perſons, and the Poſſeſſion ſeparate in others, and are not joined, *ibid.*

How a Truſt and an Uſe differ, *Page* 345

The Word *Truſt* is proper to limit an Uſe, unleſs the Eſtate be firſt limited to the Uſe of one in Truſt, *ibid.*

Feoffment in Fee to Uſes without Conſideration, ſo much of the Uſes as is undiſpoſed of, remains in Feoffor, *ibid.*

The Statute *of Uſes* is properly to give him the Poſſeſſion, who had only the Uſe, *ibid.*

An old Uſe may be revoked, and a new one raiſed at the ſame Time, *ibid.*

Every Uſe *in eſſe* is executed by the Statute, *ibid.*

But no contingent Uſe or Right is executed until it comes *in eſſe*, *ibid.*

When Uſes are limited to Perſons *in eſſe*, thoſe who can take ſhall take preſently, and the others ſhall take when they come *in eſſe*, 346

To every Execution of an Uſe four Things are requiſite, *viz.*

I. A Perſon ſeiſed, *ibid.*

II. A *Ceſtuy que Uſe in eſſe*, *ibid.*

III. An Uſe *in eſſe*, *ibid.*

IV. The Eſtate muſt be veſted in the *Ceſtuy que Uſe*, *ibid.*

The Statute never intended to execute future Uſes upon a Contingency, *ibid.*

An Uſe muſt ariſe only by one Way, *ibid.*

Tenant in Fee has but two Ways to raiſe an Uſe, *viz.*

I. By parting with the Poſſeſſion, *ibid.*

II. By keeping the Land, and yet to make the Poſſeſſion to the Uſe of another, *ibid.*

On a Bargain and Sale for Money no other Uſe can be appointed, *ibid.*

There are two Ways to raiſe an Uſe without Tranſmutation of Poſſeſſion, and what they are, 346

A Tenant in Tail cannot ſtand ſeiſed to an Uſe, 347

Tenant in Fee bargains and ſells for Money, he is ſeiſed to the Uſe of the Bargainee, *ibid.*

A Man may be ſeiſed by Bargain and Sale, or by Covenant or Agreement, *ibid.*

But an Uſe cannot ariſe by Covenant, *Proviſo*, or Bargain and Sale, on a general Conſideration, *ibid.*

Whether a valuable Conſideration may be averred, *Page* 347

An Uſe will not ariſe on a Covenant to ſtand ſeiſed, without averring Conſideration of Blood, *ibid.*

But Uſes will ariſe by Recovery, Fine or Feoffment, without Conſideration, *ibid.*

Covenantor on a good Conſideration ſhall ſtand ſeiſed to Uſes, *ibid.*

Where there is no Tranſmutation of Poſſeſſion, there muſt be a good Conſideration, 348

But *Ceſtuy que Uſe* may grant without Conſideration, *ibid.*

Yet there muſt be a Conſideration to create an Uſe, *ibid.*

Feoffment in Fee without Conſideration, and not ſaying to whoſe Uſe, it ſhall be to the Uſe of the Feoffor, *ibid.*

Conſideration of Blood will raiſe an Uſe, *ibid.*

But a Baſtard Son is not a ſufficient Conſideration, *ibid.*

Tho' Uſes are raiſed in Conſideration of paternal Love, and there be a *Proviſo* to make Leaſes, yet the Covenantor cannot make a Leaſe on a general Conſideration: But had it been by Fine or Recovery, he might, *ibid.*

A Man may deviſe to one to the Uſe of another, *ibid.*

A Feoffment to the Uſe of his Will: The Uſe and Eſtate veſts in the Feoffee, *ibid.*

But to the Feoffor's Uſe in the mean Time, if without Conſideration, and why, *ibid.*

Difference between a Feoffment upon Truſt to perform a Will, and a Feoffment to the Uſe of ſuch Perſon as appointed in his Will, 349

A Fine levied of a Reverſion or Rent to Uſes: *Ceſtuy que Uſe* may diſtrain, as if there had been an Attornment, *ibid.*

A Rent ſhall ariſe out of the Eſtate of *Ceſtuy que Uſe* on a Recovery, *ibid.*

If a Recovery be had and no Uſe declared, it is to his own Uſe, *ibid.*

When Feoffees are ſeiſed to the Uſe of the Feoffor for Life, and of his Heirs in Fee, the Statute brings the Poſſeſſion to theſe Uſes; and the Warranty made by the Feoffor to the Feoffees is wholly deſtroy'd, *ibid.*

Feoffment in Conſideration of Love to his Son, to the Uſe of himſelf for Life, Remainder to his Son in Tail: No Uſe ariſes without Livery, *ibid.*

The Intention of the Parties is the Foundation of Uſes, *Page* 350

But this Intention ought to have three Qualifications, *viz.*

I. It ought to be manifeſt out of the Deed, *ibid.*

II. It ought to be according to the Rules of Law, *ibid.*

III. It ought to be taken upon the intire Deed, *ibid.*

A Grant of a Reverſion expectant on Life, in Conſideration of natural Love to *B.* his Son, to the Uſe of himſelf for Life, after to the Son in Tail, Remainder in Tail, is void, *ibid.*

A Uſe ſhall not ariſe by a Covenant, where it was intended to be raiſed otherwiſe, 351

What Words will amount to a Covenant to ſtand ſeiſed, *ibid.*

How it differs from a Covenant at Common Law, *ibid.*

Where there is no Tranſmutation of Poſſeſſion, there muſt be a good Conſideration to raiſe an Uſe, *ibid.*

Uſes muſt agree with the Rules of the Common Law, *ibid.*

Bargain and Sale to *B.* to the Uſe of *A.* for Life, and *B.* in Tail, is void, *ibid.*

No Conſideration but Blood or Marriage will raiſe an Uſe upon a Covenant, *ibid.*

Where one and his Son of the one Part, and Strangers of the other Part, in Conſideration of Blood, grants to the Strangers to the Uſe of himſelf for Life, Remainder to his Son in Tail, it raiſes no Uſe, *ibid.*

Where there is no Eſtate, no Uſe can ariſe, 352

A Covenant to ſtand ſeiſed to an Uſe, in Conſideration of Payment of his Debts out of his Eſtate, is a void Uſe, *ibid.*

A Rent granted in Conſideration of natural Affection and Money, amounts to a Covenant to ſtand ſeiſed, 353

A Covenant to ſtand ſeiſed operates to raiſe an Uſe, but not to bring Covenant on it, *ibid.*

In a Covenant to ſtand ſeiſed to Uſes, the Uſes undiſpoſed of remain in the Covenantor, to ſerve the contingent Uſes: But in Feoffments to Uſes, the Uſes are diſpoſed of, and muſt come out of the Feoffee's Eſtate, *ibid.*

Feoffment in Fee to the Uſe of himſelf for Life, then to the Uſe of *B.* for Life, then to the Uſe of *C.* for Life, *&c.* If *B.* refuſes, *C.* ſhall take his Remainder preſently, *Page* 353

Feoffee to Uſes parts with all the Eſtate out of him, but on a Covenant to ſtand ſeiſed he may have the Eſtate again on Refuſal of *Ceſtuy que Uſe*, *ibid.*

On a Covenant to raiſe Uſes, every Uſe is ſeveral, *ibid.*

And if one refuſes, the next in Remainder ſhall take preſently, *ibid.*

On a Feoffment to Uſes all is in the Feoffee, *ibid.*

Tho' ſome Uſes are void, the others ſhall ſtand, *ibid.*

If an Uſe is raiſed by Covenant, the Covenantor continues the Poſſeſſion; and the Uſes ſhall draw the Poſſeſſion, if according to Law, *ibid.*

In a Covenant to ſtand ſeiſed, the Uſes undiſpoſed of remain in the Owner of the Land, 354

Covenant to ſtand ſeiſed to the Uſe of *J. B.* after forty Years, is a Fee in the Covenantor in the mean Time, *ibid.*

Covenant to pay certain Sums, and if not paid, the Feoffees to ſtand ſeiſed till the Money be raiſed: On Failure they may enter, 356

And a Uſe is a Charge on the Land, and cannot be deſtroy'd, *ibid.*

A Man cannot take a particular Eſtate to himſelf without a Donor; unleſs it be by Way of Uſe, *ibid.*

A Man cannot give an Eſtate to his Wife by Deed, but may covenant to ſtand ſeiſed to her Uſe, *ibid.*

Or he may deviſe to her, *ibid.*

Tenant in Fee makes a Feoffment in Fee to the Uſe of his Daughter for Life, Remainder to his Son in Tail, Remainder to the Feoffor's right Heirs: Yet he hath a Reverſion; and his right Heirs cannot be Purchaſors, 357

A Covenant to ſtand ſeiſed to the Uſe of the Heirs of his Body, is the ſame as if limited to himſelf and the Heirs of his Body, *ibid.*

The Heir and Anceſtor are Correlatives, and therefore a Man cannot make his right Heirs Purchaſors without putting the whole Fee-ſimple out of himſelf, *ibid.*

Feoffment to the Uſe of ſuch Perſon, and of ſuch Eſtate as he ſhall appoint by his Will: The Feoffor is ſeiſed of a qualified Fee until the Limitation made, *Page* 358

A Covenant that after his Death his Heir ſhall ſtand ſeiſed to an Uſe, is void, *ibid.*

A Feoffment to the Uſe of the Heirs of his Body is an Eſtate for Life in the Feoffor, 359

A Feoffment to the Uſe of himſelf for Life, Remainder to another in Tail, Remainder to his own right Heirs: The Reverſion is in the Feoffor, *ibid.*

The Statute of Uſes incorporates the Uſe and the Poſſeſſion indiſſolubly, *ibid.*

If Tenant in Fee leaſe for Life, Remainder to the Heirs Male of his Body, the Remainder is void, *ibid.*

But a Feoffment to the Uſe of himſelf for Life, Remainder to his Heirs in Tail Male, is good, *ibid.*

Uſes are directed by the Rules of the Common Law, *ibid.*

And as to the Veſting of them they differ not from Eſtates conveyed in Poſſeſſion, *ibid.*

No favourable Conſtruction ought to be made for Uſes againſt a Rule of Law, *ibid.*

Difference between a Leaſe for Life, Remainder in Tail, where the Heir ſhall be in by Deſcent, and a Feoffment to the Uſe of *A.* for Life, Remainder to his Iſſue in Tail, who ſhall take by Purchaſe, 360

If a Gift be made in Tail Female, the Iſſue Female only ſhall inherit, *ibid.*

But a Gift to *A.* for Life, (who has a Son and a Daughter) Remainder to the Heirs Female of his Body: His Daughter cannot take, and why, *ibid.*

Covenant to ſtand ſeiſed in Conſideration of Money and Marriage; no Uſe will ariſe without Marriage, *ibid.*

The Marriage is the Principal Conſideration; the Money is but the Acceſſory, *ibid.*

But an Uſe will ariſe if the Eſtate be executed by Feoffment, Fine, or Recovery, *ibid.*

The Father cannot covenant that the Son ſhall ſtand ſeiſed, *ibid.*

Where there is no Tranſmutation of Poſſeſſion, the Eſtate remains in the Covenantor, and there muſt be a good Conſideration to raiſe an Uſe; as, for Love or Affection, or Marriage, 361

But Money will not raiſe an Uſe without Inrolment, *ibid.*

Form of a Deed of Covenant to ſtand ſeiſed to Uſes, *ibid.*

An Uſe will ariſe on a Leaſe and Releaſe, if a Conſideration of five Shillings be in the Leaſe, tho' there be no Conſideration in the Releaſe, *Page* 361

A Man ſeiſed in Fee, in Conſideration of natural Love to his Daughter, by Deed inrolled, did give, grant, bargain and ſell, to her, *&c.* *Q.* Whether a good Deed to raiſe an Uſe, *ibid.*

There are five Things neceſſary to raiſe an Uſe by Way of Covenant to ſtand ſeiſed, *viz.*

I. A ſufficient Conſideration, 361
II. A Deed, *ibid.*
III. A Seiſin in the Covenantor, 362
IV. An apparent Intent, *ibid.*
V. Apt and proper Words, *ibid.*

The Word *Covenant* is not neceſſary, *ibid.*

The Deed held good, and Words that are proper in Conveyances at Common Law will raiſe an Uſe, *ibid.*

The Father in Conſideration of Blood, gives, grants, *&c.* to his Son, *Habendum* to him and the Heirs of his Body, with other Remainders after his Death: *Proviſo*, that the Son pay the Father a Rent of 8 *l. per Annum* during Life: It is a void Conveyance, and no Uſe will ariſe thereupon, nor any Eſtate at Common Law, *ibid.*

*A.* ſeiſed of a Reverſion, or an Eſtate for Life, in Conſideration of natural Love, gives and grants to his Son, *Habendum* to him and his Heirs, to the Uſe of himſelf for Life, then to his Son in Tail, Remainder to his Daughter in Tail; but there was no Attornment nor Inrolment: This will not amount to a Covenant to ſtand ſeiſed to Uſes, 363

Feoffment in Fee to the Uſe of *A.* for Life, Remainder to *B.* for Life, Remainder to *A.* in Fee: Here is a Tranſmutation of Eſtate, and all the Uſes are created out of it, 364

Alſo if *A.* refuſes, *B.* ſhall take preſently, *ibid.*

But on a Covenant to raiſe Uſes, if one refuſe, the next in Remainder ſhall not take preſently, but the Covenantor ſhall retain it, *ibid.*

What are good Conſiderations on Covenants to ſtand ſeiſed, *ibid.*

Covenant in Conſideration of Love and Affection to ſtand ſeiſed to the Uſe of the Wife for Wife, with Power for her to limit over the Eſtate to ſuch Perſon as ſhe ſhould appoint; no Uſe ariſes to the Perſon appointed, *Page* 364

The Reſervation of a Pepper-Corn is a good Conſideration to raiſe an Uſe, 365

The Word *Grant* in a Leaſe for a Year will make the Land paſs by Way of Uſe, *ibid.*

No Uſe will ariſe where it appears that the Parties intended to paſs an Eſtate by Common Law, 364

Form of a Deed of Covenant to levy a Fine to Uſes, *ibid.*

Declarations of Truſts of Lands, are to be in Writing, by 29 *Car.* 2. 365

All Declarations or Creations of Uſes, Truſts or Confidences of any Fine or Recovery, by Deed made after the Levying or Suffering of ſuch Fine or Recovery, are good by the Statute 4 *&* 5 *Annæ*, *ibid.*

Uſes and Powers in Contingency and Poſſibility may be revoked and determined by mutual Conſent of the Parties, 367

*A.* ſuffers a Recovery to the Uſe of his Will: Then by Writing under Hand and Seal declares the Uſes, then makes a Feoffment and declares new Uſes: The firſt Uſes are revocable, *ibid.*

Recovery ſuffered to other Uſes than covenanted, held good, 368

Form of a *Proviſo* to revoke old Uſes and declare new ones, *ibid.*

## *Warranty.*

There muſt be no Warranty in a Covenant for reaſonable Aſſurance, 74

In Covenant upon a Warranty of a Leaſe for Years, the Plaintiff ought to ſhew what Eſtate he who entered had at the Time of his Entry, 87

No Fine nor Warranty ſhall bar any Eſtate in Poſſeſſion, Reverſion or Remainder, which is not deveſted and put to a Right, 126

A Warranty will bind only where there is a Right of Action left; but not where there is a Right of Entry, *ibid.*

The Word *Dedi* is a Warranty in Law, 175

Where a general Warranty ſhall bind, and where not, 209

*Warrantia Chartæ.*

A *Warrantia Chartæ* was brought where a Term for Years only was evicted, and Judgment for the Defendant. But Covenant had been the proper Action in this Caſe, *Page* 87
Difference between a *Warrantia Chartæ* and Covenant, 88
Where Tenant for Life is evicted of all his Eſtate under the Leſſor's Title, his Remedy is by *Warrantia Chartæ*, *ibid.*

*Waſte.*

Covenant that Leſſor after four Years may come to ſee if any Waſte: He may come when he pleaſes, 89
Covenant that Leſſee may take Houſe-boot, &c. without committing Waſte, is vain, *ibid.*
The Signification of the Clauſe *without Impeachment of Waſte*, 302
That that Clauſe gives Power to the Leſſee to make Waſte for his own Uſe, *ibid.*
It gives him a Power to cut down the Trees, and convert them to his own Uſe, *ibid.*
Otherwiſe where the Words are *Without Impeachment by any Action of Waſte*, *ibid.*
It is not Waſte to cut down dead Trees, 303
A Leaſe excepting the Woods: Waſte will not lie, and why, 141
Waſte in general by Tenants ſuffering Houſes to be in Decay, cutting Timber, ploughing up Meadows, &c. 303

*Way.*

Articles that one ſhall have a Way, amount to a Grant of a Way, 60

*Will.* See **Deviſe, Expoſition of Wills.**

A Will to paſs Lands muſt be in Writing ſigned by the Party in the Preſence of three Witneſſes, who muſt ſet their Names to it in the Deviſor's Preſence, 102
A Will in Form of an Indenture, held a good Will, *ibid.*
How Wills ſhall be conſtrued, 103
Collateral Averments not admitted in Caſe of a Will, *Page* 103
Two Grounds for the Expoſition of Wills, *ibid.*
Words in a Will, which diſinherit the Heir, muſt be clear and not doubtful, 104
An Eſtate may ariſe by Will, by Implication, 105
In a Conveyance to Uſes there may be an Interpoſition of other Eſtates, and the Remainder ſtand good: But in a Will the Remainder ſettled muſt follow the Rule in Law, 113
The Word *Heir* in a Will deſcribes a Perſon; but not *Heirs* in the plural Number, 114
Probate of Wills belongs to the Spiritual Court, and no Prohibition lies againſt it, 116
But the Probate of Wills for Lands only, and no Goods, need not be in the Spiritual Court; and if there be a Suit to compel the Probate thereof, a Prohibition lies, 117
But where the Will is of both Lands and Goods, it muſt be in the Spiritual Court to enable the Executors to ſue for the Debts, *ibid.*
A Will ſhall not be void, if by any Conſtruction it may be made good, 169
When a Will is good, without formal Signing, being written by the Party himſelf, *ibid.*
Subſcribing of Witneſſes may be good, if in another Room in the Teſtator's View, &c. 170
The Law does not favour an Eſtate limited by way of Uſe ſo much as a Will, 169
A *Codicil* for Lands annexed to a Will, how to be, *ibid.*
How a Condition ſhall be created in a Will, 170
Where there are two Deviſes in a Will of the ſame Eſtate to two ſeveral Perſons, the laſt Deviſe ſhall ſtand, *ibid.*
A Will ſhall not be favoured where it is repugnant, 171
A Will muſt not croſs the Grounds of the Law, *ibid.*

*Words.* See **Expoſition of Words.**

Reſtraining Words, how to be expounded, 53
Words of Reſtraint at the Beginning or End of a Sentence, explain the whole, *ibid.*

# *The* TABLE *to the Firſt Part.*

Whether the Words, *By any Act done by him*, at the End of a Covenant that he was ſeiſed, ſhall refer to all before, or only to the laſt Part, *Page* 57

The Word *Covenant*, is not neceſſary to make a Covenant, 58

Covenant lies on the Words *Reddendum*, *Conceſſi* or *Dimiſi*, 93

Where vain Words ſhall operate, 166

Where Words in the Beginning of a Sentence refer, and where Words in the Middle, *ibid.*

How the Words *ſecundum formam Chartæ*, ſhall be expounded, 183

Where Words of Signification ſhall be rejected, 215

Where Words ſhall be tranſpoſed, *ibid.*

How the Word *ſucceſſive* diſtinguiſhes the ſeveral Eſtates and Poſſeſſions, 300

The Diverſity between placing the Word *ſucceſſive* before the *Habendum* or after it, *ibid.*

The Word *If* makes a Condition, *ibid.*

The Word *Si* makes a precedent Condition, 29

Where *Pro* makes a Condition precedent, and where ſubſequent, *ibid.*

The Words *Provided always*, &c. *that the Leſſee ſhall not alien*, make both a Condition and Limitation, *ibid.*

*If it ſhall happen* make no Condition without Words of Entry, *ibid.*

Where the Word *Paying* is not a Condition, but a reciprocal Covenant, for which each Party may have his Action, 40

Where *in conſideratione performationis inde* made a Condition, and where not, 77

To what the Words *Give and Grant* do enure, and how they ſhall be conſtrued, *Page* 163, 214

The Words *Divers good Conſiderations* will not raiſe an Uſe, 177

The Words *Dedi, conceſſi & confirmavi* are good, and work without Livery, 45

The Word *Demiſe* may amount to a Conſideration, *ibid.*

Where the Word *Paying* is not a Condition, but a reciprocal Covenant, for which each Party may have his Action, 40

The Word *Covenant* makes a Leaſe, tho' the Word *Grant* be omitted, 55

The Words *Paying and Performing* make a Covenant, not a Condition, 56

How the Words *For any Act done by him* ſhall be conſtrued, 71

The Word *Moleſtation* extends not to perſonal Torts, 79

The Words *Other than* amount to an Exception, 140

Doubtful Words ſhall not alter an expreſs Deviſe, 169

Of the Word *Pro* in a Grant, 222

When the Words *Behoof* and *Uſe* were firſt uſed in our Law, tho' they had long before been in Practice, 340

What Words will amount to a Covenant to ſtand ſeiſed, 351

The Word *Grant* in a Leaſe for a Year will make the Land paſs by way of Uſe, 365

What the Words *Tempore belli* ſignify in Law, 124

The Words *Yielding and Paying* make an expreſs Covenant, not a Covenant in Law, 9, 53, 56, 60

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# A
# TABLE
## OF
## The Principal Matters
### Contained in the
## CHANCERY CASES.

*Agreements and Articles.*

AGreement to the contrary will not prevent Equity, *Page* 369

Where an Agreement to convey, and an adequate Conſideration paid, binds the Land, *ibid.*

Where a Perſon ſhall not be obliged to pay his Money purſuant to Articles for a Purchaſe, *ibid.*

When it is ſufficient if a Title can be made according to the Agreement to ſell an Eſtate, 370

In what Caſe a Marriage Agreement ſhall be executed, *ibid.*

Where in the Caſe of Marriage Articles Equity will decree a Conveyance in ſtrict Settlement, *ibid.*

An Agreement may be good, though the Conſideration is unequal; but not if unreaſonable, *ibid.*

Where a miſtaken Agreement is binding in Equity, *ibid.*

Agreement, if ſign'd but by one Party, hath been held good, *Page* 370

How if not ſign'd; Marriage Propoſals an Agreement, 371

Agreement in Writing diſcharged by Parol, *ibid.*

What is not a Signing, ſo as to take it out of the Statute of Frauds, *ibid.*

Agreement in Part executed not within the Statute, but ſhall be carried into Execution, *ibid.*

Agreement by Parol, where within the Statute, *ibid.*

Where a Parol Agreement ſhall be ſpecifically executed, *ibid.*

*Aſſignments.*

Aſſignees not bound by a perſonal Covenant, 372

An Aſſignee of a Leaſe aſſigns, he is liable for the Rent due before Aſſignment, *ibid.*

Aſſignee

Aſſignee of a Mortgagor was oblig'd to pay the Rent, tho' he never enter'd on the Lands, *Page* 372
Where an Aſſignee of the Leſſor having Notice of a Covenant with the Leſſee ſhall be obliged to make it good, *ibid.*
So in the Caſe of a Purchaſor of the Inheritance, 373
Leſſee covenants to Repair; his Under-Leſſee is not bound, but the original Leſſor muſt have his Remedy againſt Leſſee's Executor. *Secus* if the Executors are Inſolvent, *ibid.*
Deviſee in Remainder of a Term articles to ſell; this is a good Aſſignment in Equity, *ibid.*
How Things in Action are aſſignable in Equity, *ibid.*
Difference between the Aſſignment of the Party and an Adminiſtrator, *ibid.*
A Poſſibility cannot be aſſign'd in Equity, *ibid.*
May be releaſed, 374
Choſes in Action aſſignable in Equity, *ibid.*
Aſſignment of a contingent Intereſt, or a Poſſibility, tho' not ſtrictly good by Aſſignment, yet will operate as an Agreement, *ibid.*
Grant of a future Poſſibility tho' not good in Law, yet a Poſſibility of a Truſt in Equity may be good, *ibid.*

### *Bargain and Sale.*

Bargain and Sale in Time of Neceſſity, ſet aſide, 375
An Heir ſelling Land in the Life of his Anceſtor, when it is good, *ibid.*
If he ſells a Reverſion at an Under-value, the Court will not Decree Performance of Covenants, *ibid.*
Nor confirm the Bargain; Decree reverſed, *ibid.*
Where the Sale of a Reverſion by a Son in his Father's Life-time was relieved againſt, 376
Sale by a Lunatick avoided, *ibid.*

### *Bonds.*

The Obligor's Name left out in the Bond, 377
If a Bond be taken away, or loſt, Remedy in Equity, *ibid.*
Voluntary Bond for the Payment of an Annuity being loſt; Decreed that either the Annuity or Penalty ſhould be paid, *Page* 377
But when it ſhall be preſumed paid, as after 20 Years, without Demand, *&c.* *ibid.*
Where tho' the Conſideration of a Bond fails, yet if the Party may have full Benefit, tho' not purſuant to the Terms of the Agreement, he ſhall have no Relief, *ibid.*
No Relief againſt a Bond given for a Surrender of a Commiſſion in the Army, tho' the Obligor cannot get himſelf admitted, *ibid.*
Money payable by Bond, may be moderated, and leſs paid, 378
No more than the Penalty ſhall be recovered in Equity on a Bond, *ibid.*
*Secus* if the Obligor is Plaintiff, and not the Obligee, 379
A Bond extinguiſhed at Law, *ibid.*
But a Bond extinguiſhed at Law, good in Equity, *ibid.*
A Bond to compel Marriage is void, tho' drawn in common Form, *ibid.*
Bond to a Miſtreſs, *&c.* for ſecret Service, held good, 380
Recognizance by Tenant in Tail not to ſuffer a Recovery; Decreed to be delivered up, *ibid.*
So where he gives Bond not to commit Waſte, the Bond relieved againſt, *ibid.*
But a Bond from the Son to the Father to reſtrain docking the Entail, held good, *ibid.*
So to pay him an Annuity for his Life, *ibid.*

### *Conditions.*

Infants are bound by Conditions, 381
Conditions precedent and ſubſequent, how perform'd, *ibid.*
What is a Condition precedent, *ibid.*
What is a Condition ſubſequent, *ibid.*
Relief is given in Equity againſt Conditions ſubſequent, and in Caſes where Compenſation made, 382
And no Advantage ſhall be taken of a Penalty, or Forfeiture, *ibid.*
Equity will relieve where it can give Satiſfaction for the Breach of a Condition, *ibid.*
Mortgage at 6 *l. per Cent.* with a Proviſo to take 5 *l.* if paid within three Months; no Relief if there is a great Arrear, *ibid.*

On Breach of a Condition, the Time of Payment of the Money may be enlarg'd, *Page* 382

Upon Payment of Principal, Intereſt and Coſts, Relief againſt a Condition, 383

Condition in a Will, not to marry without Conſent, how conſtrued in Equity, *ibid.*

When Equity will not interpoſe, *ibid.*

Where the Legacy is limited over, there is no Relief on Breach of the Condition, *ibid.*

Otherwiſe it is only *in Terrorem*, 384

Legacy to *B.* and if ſhe married under Twenty-one without Conſent, then over: If there is a tacit Conſent to *B.*'s Marriage, *B.* ſhall be intitled to her Legacy, *ibid.*

What Clauſe ſhall be conſtrued more than *in Terrorem*, and where the Deviſe of the Surplus of the perſonal Eſtate is a Deviſe over, *ibid.*

Where a Condition not to marry without Conſent ſhall be carried no further than the Daughter's Minority, *ibid.*

Equity upon a Refuſal to Conſent will diſpenſe with ſuch Condition, 385

### *Covenants.*

Covenant contrary to the Intent, 386

A Covenant to ſtand ſeiſed, good in Equity, tho' not at Law, *ibid.*

Covenants concerning Purchaſes, *ibid.*

Covenant by Tenant in Tail not to ſuffer a Recovery is good to bind the Aſſets, and being accepted ought not to be varied, *ibid.*

Where Equity will compel an Execution of the Covenant, 387

The Benefit of a Covenant loſt, *ibid.*

A ſpecifick Execution of Covenant decreed, *ibid.*

Covenant not to alien without Licence, no Relief, *ibid.*

### *Deeds and Conveyances.*

Equity rais'd out of a Deed not proved, 388

Conſtruction and Proof of Deeds in general, *ibid.*

Miſtakes, Miſ-recitals, *&c.* will not avoid a Deed in Equity, *ibid.*

Deeds defective, when ſupply'd and made good, *ibid.*

Miſtake in a voluntary Conveyance refuſed to be amended, *ibid.*

Copy of a voluntary Settlement decreed to be delivered up, being indirectly gained, *Page* 389

Defendant obliged to admit Articles as ſet forth in Plaintiff's Bill, *ibid.*

Where Deeds cancelled and found among Waſte Papers, held good, *ibid.*

Where a Deed is ſuppreſſed, how the Court decrees, 390

If a Deed be ſuppreſſed, Relief ſhall be had on it, *ibid.*

Deeds, *&c.* loſt, Remedy, *ibid.*

Proof of a Deed when loſt, *ibid.*

Cuſtody of a Deed, how to be, where two Perſons have Right to the Lands, *ibid.*

Where the Defendant is not obliged to produce his Deed, 391

Counterpart of a Settlement ordered to be brought into Court, *ibid.*

A Deed not ſuffered to be inſpected till the Hearing of the Cauſe, *ibid.*

### *Deeds fraudulent.*

A Deed may be deem'd fraudulent, by being conceal'd, 391

Voluntary Conveyances are fraudulent againſt Purchaſers, *ibid.*

So Deeds of Conveyance to Uſes againſt Creditors, 392

Dower not forfeited by Fine and fraudulent Agreement, *ibid.*

A Deed made privily to ſettle Eſtate before Marriage, *ibid.*

Not fraudulent, if to provide for Children by a former Husband, *ibid.*

Where an old Woman of weak Underſtanding was deceiv'd in a Conveyance of Lands, Relief had againſt it, *ibid.*

And where a Man impos'd upon, Articles, Deeds, Fine, *&c.* ſet aſide, 393

What is Evidence of a Fraud in Reſpect to a Deed, *ibid.*

Difference between a Deed and a Will gain'd from a weak Man, *ibid.*

What is a good Reaſon to ſet aſide a Grant, *&c.* *ibid.*

Unreaſonable Marriage Settlement not to be ſet aſide, *ibid.*

Aſſignment of a Leaſe ſet aſide on a Miſinformation, *ibid.*

Where a Mortgage ſhall be ſet aſide, *ibid.*

Grant of a Rent-Charge relieved againſt, *ibid.*

A Bargain tho' unfair, yet if not attended with ſtrong Badges of Fraud, not to be relieved againſt, *Page* 393
In what Caſes a fraudulent Will may be relieved againſt in Equity, 394
Will of real Eſtate not to be ſet aſide in Equity before a Trial at Law, *ibid.*
Will gained upon a Miſrepreſentation not ſet aſide, *ibid.*
Fraudulent Releaſe, Statute, Bill of Exchange, *&c.* *ibid.*
Releaſe gained from an Heir under a Miſrepreſentation ſet aſide, *ibid.*
So if gained from a Huſband of a Coheir, *ibid.*
The Rule in Equity to avoid a Releaſe, 395

*Eſtates in Fee-ſimple, Fee-tail, and for Life.*

Diverſity in a Deviſe to pay Money, when it is a Fee, and when not, *ibid.*
What ſhall be an Eſtate in Fee, and not an Eſtate-tail, *ibid.*
Where a Baſtard ſhall have a Fee, *ibid.*
*A.* deviſes all her Land and Eſtate, a Fee paſſes, *ibid.*
So a Deviſe of Reſt and Reſidue of real and perſonal Eſtate, 396
The Word *Eſtate* ſignifies the Intereſt in the Land, and by a Deviſe of the Reſt of an Eſtate a Fee paſſes, *ibid.*
Where an Eſtate-tail, and not a Fee, paſſes, *ibid*
Tho' *B.* is Tenant in Tail of Land to be purchaſed, yet the Purchaſe to be made being executory, and in the Power of the Court, he ſhall be only Tenant for Life, Remainder to his firſt Son, *&c.* *ibid.*
What Limitations create an Eſtate-tail, 397
Power in Equity of Tenants in Tail, to ſell, deviſe, *&c.* *ibid.*
Acts not binding to Iſſue in Tail, *ibid.*
If a Tenant in Tail ſell Lands, and die in Priſon, not executing Deeds, the Iſſue are not bound, *ibid.*
Eſtate-tail in Truſt barr'd, 398
What Words ſhall paſs only an Eſtate for Life, *ibid.*

*Feoffments.*

A Feoffment may operate as a Covenant to ſtand ſeiſed to Uſes, 399

I

*Fines.*

Fine levied by Decree in Chancery, how it works, *Page* 399
A Fine, *&c.* will bar a Truſt, as an Eſtate at Law: *Q.* as to a Remainder, *ibid.*
But not bar a Truſt or Equity created by the Fine, 400
Fine cannot be levied of Money agreed to be laid out in Land, *ibid.*
If levied by one having a defeaſible Right, it is good, *ibid.*
Where in a Mortgage by Huſband and Wiſe, the Wiſe ought to levy a Fine, *ibid.*
Where Legacies charged upon Land not barred by a Fine of the Land, *ibid.*
Tenant for Life levies a Fine, and mortgages; Mortgagor relieved againſt the Forfeiture, *ibid.*
Truſt Eſtate not forfeited by Fine, *ibid.*
The Sale of Lands by a Truſtee, and Fine and Non-claim, no Bar, 401
If the Purchaſer of Land have Notice of a Truſt, his Fine will not Bar, *ibid.*
A Fine by a Mortgagee, is no Bar to the Mortgagor, *ibid.*
Where Equity will not make good a Fine, *ibid.*
Nor ſupply any Defect in the levying it, *ibid.*
Fine ſet aſide, 402
Where a Fine was levied, and decreed to be only in Truſt, *ibid.*
Infant not barr'd by the Laches of his Truſtees in not entring to avoid a Fine of his Lands, *ibid.*
The Manner of Relieving againſt a Fine obtained by Fraud, *ibid.*
And for any Error, *&c.* in what Court it is cognizable, *ibid.*

*Grants.*

A Grant of the Hundred paſſes only the Franchiſe, and not the Land in the Hundred, 403
Where no Eſtate is mentioned, the Grant is void, *ibid.*
Perſons for whoſe Benefit Lands are held, to join in Grants, *ibid.*
Grant of a Guardianſhip, Equity will not ſet it aſide, *ibid.*
According to the Statute 12 *Car.* 2. *ibid.*

*Jointures*

# *The* TABLE *to the Chancery Caſes.*

*Jointures and Settlements.* See *Deeds.*

WHere a Recovery ſuffered by a Jointreſs is a Forfeiture within the Statute 11 *H.* 7. *Page* 404

Jointreſs Tenant in Tail after Poſſibility, *&c.* reſtrained from committing Waſte, *ibid.*

Where a Jointreſs, by Combination with the Heir, refuſes to accept a Deviſe to her of other Lands in Lieu of her Jointure, 405

Execution of Marriage Articles decreed in Equity, *ibid.*

Jointure evicted made good, *ibid.*

Jointreſs may commit Waſte to make up the Defect of her Jointure, *ibid.*

Deficiency of a Jointure made up, notwithſtanding any Neglect or Laches in the Jointreſs in not requeſting it, *ibid.*

A prior Settlement ſet aſide as fraudulent againſt a Jointreſs who is a Purchaſer for a valuable Conſideration, 406

Where a Truſt reſults to a Jointreſs, *ibid.*

Jointreſs paying a Mortgage, to hold over the Lands, *ibid.*

Where a Jointreſs and the Heir ſhall contribute to pay off Incumbrances, *ibid.*

Deeds in the Hands of a Jointreſs not to be deliver'd up 'till her Jointure is confirm'd, *ibid.*

A Jointreſs is not bound to anſwer what Title her Husband had, *ibid.*

Jointure, Covenant omitted in the Settlement, decreed to be perform'd, 407

Settlement ſhall be made according to the Intent of the Articles, *ibid.*

As where Husband is Tenant in Tail by the Articles, yet the Court will Decree him only to be made Tenant for Life, *ibid.*

Settlement decreed to go according to the Articles, *ibid.*

Husband not obliged to amend his Security, *ibid.*

Jointure, tho' made unequally, not to be ſet aſide, *ibid.*

Husband to make a Settlement on the Wife, ſhe marrying without Conſent of Executors, *&c.* *ibid.*

In what Caſes a Man ſhall be forced to make a Jointure or Settlement upon his Wiſe, *ibid.*

And when he ſhall have his Wife's Portion, 408

Propoſals by the Husband to ſettle only Part of the Wife's Fortune on her, accepted by the Court, *ibid.*

Difference where the Husband has a legal Title to the Wife's perſonal Eſtate, and where he cannot get at it without the Aſſiſtance of the Court, *Page* 408

Husband injoined to ſue in the Spiritual Court for his Wife's Portion till he had made a Jointure, *ibid.*

Promiſe to give a Portion by Letter held good, *ibid.*

Where Daughters are intitled to reaſonable Portions, Equity will not take away the Proviſion for them, *ibid.*

When a Term veſted may be ſold to raiſe Daughters Portions, by Virtue of a Deed of Settlement, 409

Private Agreements, Marriage-brocage Bonds, *&c.* void, *ibid.*

But *Note*; a Difference between the Caſe of a Maiden and a Widow, *ibid.*

So Leaſes, Aſſignments, *&c.* *ibid.*

*Leaſes.*

Leſſee injoined from digging the Ground, 410

What Leſſee without Waſte may or may not do, *ibid.*

College reſtrained by its Conſtitution from making any Leaſes, except for 21 Years and at a Rack-Rent, makes Orders, recommending it to their Succeſſors to renew at leſs than the Rack-Rent; this not favoured, as tending to a Breach of the Statutes, *ibid.*

The Reaſon why Leaſes for Life were preſumed to have a longer Continuance than any Term for Years, 411

For what Time Leſſor ſhall be decreed to renew, *ibid.*

Forfeiture of Leſſee not relieved againſt, *ibid.*

Leaſe made by Husband and Wife, how conſtrued, 412

Leaſe good, tho' for more Years than the Leſſor hath, *ibid.*

A Leaſe renew'd, ſubject in Equity to a Mortgage, *ibid.*

Leaſe for Years in Truſt, and Aſſignment in Truſt to make a Tail different, *ibid.*

Leaſes to attend the Inheritance belong to the Heir, and what Leaſes are Aſſets, *ibid.*

Where Inheritance gone, how Leaſes to attend it ſhall go, *ibid.*

Where a Truſt Term ſhall not be Attendant on the Inheritance, but ſevered from it, 413

Under-

Under-leſſee is not bound by the Leſſee's Covenant to repair, *Page* 413

When a Leſſee is liable for Rent, tho' he aſſigns, *ibid.*

Leſſee denied any Relief on Breach of Covenant, *ibid.*

Equity will not intermeddle in Leaſes for Breach of Covenant, where the Parties have agreed the Damage, as to ſtay Waſte, *&c.* 414

Leaſes of Infants decreed, *ibid.*

*Mortgages.*

See *Deeds Fraudulent.*

Definition of a Mortgage, 415

How Mortgagee to be ſatisfied when the mortgaged Premiſſes fall ſhort in Value, and Mortgagor becomes a Bankrupt, *ibid.*

How a Mortgage may be made, *ibid.*

Mortgagee without Notice ſhall hold againſt an intended Purchaſer, *ibid.*

Where the firſt Mortgagee ſhall be poſtponed, *ibid.*

Once a Mortgage, and always ſo, but on Aſſignment new, 416

Principal and Intereſt Money paid upon aſſigning is all Principal, *ibid.*

Where Intereſt ſhall not carry Intereſt, *ibid.*

Intereſt apportioned, *ibid.*

No Intereſt on Intereſt, on Mortgages in Equity, *ibid.*

But it has been allow'd for Intereſt reſerv'd in the Deed, *ibid.*

And on a forfeited Mortgage, Intereſt for Intereſt ſhall be paid, *ibid.*

Intereſt made Principal, 416

Where Intereſt loſt, upon Tender and Refuſal, *ibid.*

Where a Tender of the Mortgage Money is good, tho' not made to the Perſon of the Mortgagee: But to prevent Intereſt running on after the Tender, it muſt appear Mortgagor from that Time always kept the Mortgage Money ready to pay the Mortgagor, *ibid.*

And Money intended ſatisfied on a ſleeping Mortgage, 418

Mortgages are Part of the perſonal Eſtate, and why, *ibid.*

But may go to Heirs by Deviſe, *ibid.*

So on a Purchaſe, *ibid.*

New Mortgage decreed, where former bad, *Page* 418

Where the ſecond Mortgagee ſhall be preferred to the firſt, 419

What Notice ſhall affect a ſecond Mortgagee, *ibid.*

When there are firſt, ſecond and third Mortgages, the firſt Incumbrance may be bought in to protect the others, *ibid.*

And Lands held till the Money on both Securities is paid, *ibid.*

If ſecond Mortgagee buys in an old ſatisfied Incumbrance, he need not prove Payment of any Money for it, *ibid.*

Prior Mortgage bought in *pendente lite,* *ibid.*

Where a prior Mortgage bought in ſhall not protect a ſubſequent Mortgage, 420

In what Caſe a Mortgagee cannot protect himſelf, and where he ſhall be only a Truſtee, *ibid.*

In what Order Mortgages, Judgments, *&c.* ſhall be paid off, 420

*Mortgages redeemed in Equity.*

Equity of Redemption cannot be confined, *ibid.*

Bill will not lie to redeem a Mortgage of Chambers, *ibid.*

New Term gained ſince the Mortgage is ſubject to the old Equity of Redemption, *ibid.*

Where Creditors ſhall redeem, 421

Bill by the Heir of Mortgagor to redeem diſmiſſed, being barred by the Statute of Limitations, *ibid.*

Mortgages are redeemable in their Nature, *ibid.*

A ſecond Mortgagee may redeem a Firſt, *ibid.*

Who may redeem, *ibid.*

Where Mortgagor cannot redeem one Mortgage without the other, 422

Where one has a Bond and Mortgage from the ſame Perſon, he cannot tack them together againſt Mortgagor: *Secus* againſt the Heir or Deviſee of the Equity of Redemption, *ibid.*

Where an Aſſignee of the Equity of Redemption ſhall redeem, paying only the Mortgage Money, *ibid.*

Or a meſne Mortgagee, 423

Where a Mortgagor became a Lunatick, and his Committee took up more Money, *ibid.*

Where there are two Mortgages, or a Mortgage and Bond, both to be redeem'd by the Mortgagor, or neither of them, *Page* 422

Fit Time to redeem Mortgages, is twenty Years, 423

But Redemption was allow'd after fifty Years, where the Time excuſed, *ibid.*

And Mortgages have been redeem'd before the Day, and after Foreclosure, on extraordinary Circumſtances, *ibid.*

Decrees to foreclose bind Iſſue in Tail, and when Infants bound, 424

Redemption of an Annuity, *ibid.*

*Mortgages uſurious.*

Upon a Uſurious Agreement and Mortgage, the Redemption of Lands decreed, *ibid.*

On Payment of Principal, and common Intereſt, *ibid.*

What Security on Lives, to pay a large Sum, is not uſurious, *ibid.*

*Perpetuities.*

PErpetuity defined, a Settlement not to be barred, 425

Odious in Law, and deſtructive to the Common-wealth; Decree againſt it in the D. of *Norfolk*'s Caſe, *ibid.*

The Decree reverſed; here Term to wait upon the Inheritance, no Intail, 426

Leaſes are not limitable in Tail, but the Law allows contingent Eſtates to fall in a ſhort Time, *ibid.*

Former Caſes the ſame with this adjudg'd, *ibid.*

Limitations to firſt and other Sons, Perſons not in Being, void; but when are good, 427

How far a Term for Years may be ſettled on Children, *ibid.*

Limitation of a Term to Sons, *&c.* the Contingency being to happen in twenty-one Years, *ibid.*

Where the Remainder of a Truſt Term good, 428

Limitation of a Term good where the Contingency happens within a Life, *ibid.*

Remainder of a Leaſehold, where good, *ibid.*

Remainder over, where good by way of Executory Deviſe, the Contingency being to happen within a Life, *Page* 428

Where the Limitation over of a Term is good, *ibid.*

What ſhall be a Perpetuity, 429

Heirs of Body held Words of Purchaſe, not of Limitation, in ſettling Terms, *ibid.*

*Recoveries.* See *Eſtates and Fine.*

A Recovery hath the ſame Effect in Equity as Law, to bar Remainders, 430

Where there muſt be a good Tenant to the *Præcipe*, *ibid.*

Recovery good by way of Eſtoppel, *ibid.*

Defective Recovery, and when ſuffered to a particular Purpoſe, *&c.* *ibid.*

Where Remainder Man ſhall have the Benefit of the Chance of Tenant in Tail's dying before his having ſuffered a Recovery, *ibid.*

Tenant in Tail covenants not to ſuffer a Recovery, and yet does, 431

Where a Recovery ſuffered ſhall bar the contingent Eſtates limited over, *ibid.*

Equity will (if it is for the Benefit of the Family) decree an Infant Truſtee to join in a Recovery, *ibid.*

What Method *Ceſtui que Truſt* muſt take to ſuffer a Recovery, and where Truſtees are not compellable to join, *ibid.*

Where a Recovery ſhall be a Bar for want of an Entry for the Forfeiture, 432

Where a Forfeiture, yet decreed, *ibid.*

Who may be vouched in a common Recovery, *ibid.*

*Releaſes.*

Releaſes ſet aſide by Accident relating to the original Equity, 432

Miſapprehenſion, and wrong Information, *&c.* will avoid a Releaſe, *ibid.*

General Rule as to Frauds, for avoiding Releaſes, 433

Releaſe, how to be conſtrued, *ibid.*

Either *Suppreſſio veri*, or *Suggeſtio falſi*, is a good Ground to ſet aſide a Releaſe, *ibid.*

Where a Will ſhall or ſhall not operate as a Releaſe, 434

# The TABLE to the Chancery Caſes.

*Remainders.* See *Perpetuities.*

A Remainder after a Fee-ſimple, may be by Uſe, or Deviſe, *Page* 434
Contingencies not happening, where Remainders over are good of a Term, *ibid.*
Settlement of Perſonal Chattels in a Family, with Remainders, *&c.* adjudg'd good in Equity, *ibid.*
And to deſcend as an Heir-Loom, and Inventory to be made, 435
Where a Remainder over of Goods was held good, *ibid.*
So of other perſonal Eſtate, *ibid.*
Where a Remainder over of perſonal Chattels is void, 436
And where good, *ibid.*

*Rents.*

Iſſue in Tail not liable for Arrears of a Rent-charge incurr'd in the Time of an Anceſtor, 437
Rent decreed to be paid in Equity, where no Remedy at Law, *ibid.*
And where Remedy at Law not ſufficient. But Q. *ibid.*
If any Fraud is uſed to hinder a Diſtreſs, Relief may be had in Chancery, 438
The Perſon of an Heir, *&c.* not to be charg'd for Rent, where the Land is only liable, *ibid.*
Who ſhall be intitled to the Rent, whether the Executor or Jointreſs of the Leſſor, *ibid.*
Where the Executor, and not the Heir, is intitled to the Rent, 439
For Fee-Farm Rents a Diſtreſs may be taken on all the Lands of the Tenant, unleſs aliened, *ibid.*
In what Caſe there ſhall be a Deduction of the Land-Tax out of the Quit-Rent, *ibid.*
Relief againſt a Diſtreſs for Rent, of Cattle in an Inn-keeper's Grounds, driving to Market, after Judgment at Law in Replevin, *ibid.*
Where there can be no Apportionment of the head Landlord's Rent, 440
In what Caſe there ſhall be Contribution among Under-Tenants, *ibid.*
In Equity Rent may be apportion'd, when not in Law, *Page* 440

*Revocations.*

The great Caſe of Revocations of *Bath* and *Mountague,* 440
Firſt a Will was made, afterwards a Settlement, and then a ſecond Will, 441
The Deed of Settlement found good, and valid at Law, *ibid.*
And the Laſt Will held no Revocation of the Settlement, *ibid.*
There were no Powers of Revocation at Common Law, but Conditions of Reentry, *ibid.*
Deeds are not revocable without Power reſerved therein, and all Circumſtances muſt be obſerv'd, 442
'Tis the Nature of a Will to be revoked, but not of a Deed, *ibid.*
A Power of Revocation once executed is at an End, unleſs in the Deed of Revocation there is a Power to revoke the Uſes thereby declared, *ibid.*
Power in Settlement to Revoke ſuſpends the veſting of the Portions, 443
Where a Will will be a good Revocation tho' no Mention be made of the Power, *ibid.*
Where there is no Power of new Limitation, by Power to revoke one may do it, *ibid.*
A defective Revocation has been help'd in Equity, but not ſupplied where there is none, *ibid.*
Revocations by Implication, when allow'd, *ibid.*
Revocation in Law, not ſo in Equity, 444
Where a Covenant in a Marriage Settlement is a Revocation of a Deviſe in a Will, *ibid.*
A Will revoked by a Leaſe and Releaſe ſubſequent, *ibid.*
Settlement of Part of the Lands deviſed, no Revocation of the other Part, 445

*Surrenders.*

A Defective Surrender, and the Want of it may be ſupplied in Equity, 459
Surrender not ſupplied for a natural Daughter, *ibid.*

Surrender not ſupplied for Legatees, *Page* 460
Where Copyhold ſhall paſs without a Surrender, *ibid.*
Surrender ſupplied for a Purchaſer, *ibid.*
So for a Mortgagee, 461
Surrender decreed to be made in Purſuance of a Bond given for that Purpoſe, *ibid.*
How Surrenders muſt be governed, *ibid.*
A Surrender will bar an Intail of Copyhold Land, *ibid.*

*Truſts.* See *Fines.*

TRuſt is a Creature of the Chancery, 462
What ſhall or ſhall not be a Breach of Truſt, 462, 463
Where Truſtees ſhall or ſhall not be decreed to join in ſuffering a Recovery, 464
Where Bond-Creditors ſhall come in upon a Truſt Term raiſed to pay Debts, 465
Lands given in Truſt to pay Debts, deemed as Money, *ibid.*
Truſts for paying Debts and Legacies, and in what Manner they are to be paid, *ibid.*
Lands may be ſold to pay the Debts, the annual Profits not being ſufficient, *ibid.*
Truſt Term created for raiſing Portions, 466
When the Portions ſhall be raiſed and paid, *ibid.*
When the Portions to be raiſed by Sale, Mortgage, or out of the annual Profits, *ibid.*
The Surplus after the Debts, *&c.* are paid, ſhall go to the Heir, and not be deem'd perſonal Eſtate, tho' given as ſuch by Will, 467
What ſhall be a Truſt, *ibid.*
What ſhall be a Reſulting Truſt, *ibid.*
What ſhall be no Truſt for the Father, but Act of Advancement for the Son, where Lands are purchas'd in his Name, *ibid.*
A private Truſt not declared in Writing, decreed good in Equity, 468
Bond given by Truſtee to convey as *Ceſtui que Truſt* ſhould direct. Truſtee decreed to convey to the Executor, *ibid.*
When a Purchaſe by one Executor in Truſt with the Aſſets ſhall or ſhall not be liable, *ibid.*
Truſtees chargeable for their own Receipts only, and not of others, *ibid.*
A Truſtee, where and when charged for what he might have made, *Page* 469
Where he ſhall have the whole Benefit of what he gains to himſelf, and where not, *ibid.*
Coſts and Charges allow'd Truſtees, but nothing for their Pains, *ibid.*

*Uſes.*

USE upon Uſe in Equity, 470
Gift for a Feme Covert, a Truſt and not a Uſe, *ibid.*
What ſhall be a Uſe or Truſt executed by the Statute, *ibid.*
No Difference between an expreſs and an implied Declaration of a Uſe, 471
If Money be generally given to a Pariſh, without ſaying to what Uſe, 'tis to the Uſe of the Poor, *ibid.*
Deviſes to Charitable Uſes, not good at Law, yet good in Equity, *ibid.*
Theſe Uſes are not to be alter'd or chang'd, *ibid.*
Leaſe of Lands let at under Value, ſet aſide by Commiſſioners of Charitable Uſes, *ibid.*
No Appeal lies to the Houſe of Lords from Decrees of this Nature, 472
Lands given to ſuperſtitious Uſes, and good Uſes, *ibid.*
What are ſuperſtitious Uſes, by Statute, *ibid.*

*Wills and Deviſes.* See *Conditions, Eſtates, Truſts.*

WHO may make a Will, and at what Age, 473
Wills, how conſtrued in Equity, *ibid.*
Will wrote blindly, and hardly legible, 474
Gift by Will to be intended a Bounty, *ibid.*
Evidence admitted to explain Teſtator's Intent, *ibid.*
Accidents reliev'd, where the Teſtator would have alter'd his Will, if foreſeen, *ibid.*
Perſons that may take by Will, Children, Grandchildren, *&c.* 474, 475
Portions and Legacies given, when, and to whom to be paid, 475
If a Child dies after the Teſtator, before the Day, the Adminiſtrator is intitled, *ibid.*

Where the Legacy ſhall or ſhall not Lapſe, *Page* 475, 476
Difference in Law between a Legacy to a Daughter, to be paid at twenty-one, and if ſhe attain twenty-one Years of Age, 476
But all one in Equity, *ibid.*
Where a Portion is charged on the real Eſtate by Will, if the Daughter dies, it ſinks in the Land, 477
Where Portions ſhall not Lapſe, *ibid.*
Decree revers'd where obtain'd for the Adminiſtrator, 478
When a Legacy given by Will muſt be waived, and when it ſhall be extinguiſhed, *ibid.*
Where a Legacy ſhall be a Satiſfaction for a Portion, *ibid.*
Where a Deviſe of Land is no Satiſfaction for a Marriage Bond, *ibid.*
Things of a different Kind, one never taken in Satiſfaction of the other, *ibid.*
No Ademption of a Legacy, *Page* 478, 479
Lands given by Will to pay Debts, &c. deem'd Money, and Money to buy Lands, as Land, 479
Where Mortgage Lands deviſ'd for Life, and the Remainder over to another, how Mortgage Money to be paid on Redemption, *ibid.*
Tenant for Life to have one Third, and the other two Thirds to the Remainder Man, *ibid.*
Deviſee for Life of mortgaged Lands, to contribute a Third towards Diſcharge of the Mortgage, 480
Where there ſhall be a Contribution between two Deviſees, *ibid.*
Lands incumber'd with Debts are deviſed to one for Life, with Remainder to others in Fee, *ibid.*
The Deviſees muſt pay proportionable Shares of Incumbrances, *ibid.*

**Aſſignments.**

# Aſſignments.

What Aſſignment is.

ASſignment is the ſetting over or transferring the Intereſt a Man hath in Land, or any other Thing, to another: And he that aſſigns is called the Aſſignor.

Aſſignee, *Quid.*

An Aſſignee is he to whom the Thing is appointed or aſſigned, to be occupied, uſed, paid or done, and is always ſuch a Perſon who hath the Thing ſo aſſigned in his own Right, * and for himſelf. Terms of the Law 31. a.

A Term for Years (unleſs in actual Poſſeſſion) muſt be aſſigned on the Land.

Note; Where a Perſon hath a Term for Years, (a) he cannot grant and aſſign the ſame over, unleſs he hath actual Poſſeſſion; but if he hath not, then it muſt be by the Sealing of the Deed upon the Ground; for which ſee Title Entry. Carter 161. Cr. El. 483. pl. 19. 446. pl. 11. 447. 3 Lev. 387. 1 Lev. 47, 270, 271, 272. Daliſon 81. pl. 20.

It muſt be by Deed.

The Aſſignment muſt be by Deed, by the Statute of Frauds and Perjuries. 29 Car. 2. cap. 2.

There needs no Conſideration in an Aſſignment for Term for Years.

When a Tenant for Years aſſigns his Eſtate, there needs no Conſideration; for the Tenure and Attendance, and being ſubject to Forfeiture and Payment of Rent, (if there were any) is ſufficient to veſt an Uſe in the Aſſignee. Per North Ch. Juſt. 1 Mod. 263.

All Perſons who have any Grants of the King of any Manors, Lands, &c. of any diſſolved Monaſteries, &c. their Heirs and Aſſigns,

32 H. 8. c. 34.

The Statute of 32 H. 8. c. 34. of Aſſignments, enacts, That as well all and every Perſon and Perſons, and Bodies Politick, their Heirs, Succeſſors and Aſſigns, which have or ſhall have any Gift or Grant of our ſaid Sovereign Lord, by His Letters Patents, of any Lordſhips, Manors, Lands, Tenements, Rents, Parſonages, Tithes, Portions or other Hereditaments, or of any Reverſion or Reverſions of the ſame, which did belong and appertain to any of the Monaſteries and other Religious and Eccleſiaſtical Houſes diſſolved, ſuppreſſed, relinquiſhed, forfeited, or by any other Means come to the King's Hands ſince the fourth Day of February in the

* Viz. The Intereſt is veſted in him.

(a) Or a Mortgage for Years.

the twenty-ſeventh Year of His moſt Noble Reign, or which at any Time heretofore did belong or appertain to any other Perſon or Perſons, and after came to the Hands of our ſaid Sovereign Lord: * As alſo all other Perſons being Grantees (b) or Aſſignees, to or by our ſaid Sovereign Lord the King, or to or by any other Perſon or Perſons than the King's Highneſs, and the Heirs, Executors, Succeſſors and Aſſigns of every of them, (c) ſhall and may have and enjoy like Advantages againſt the Leſſees, (d) their Executors, Adminiſtrators and Aſſigns, (e) by Entry for Non-payment of the Rent, or for doing of Waſte or other Forfeitures; and alſo ſhall and may have and enjoy all and every ſuch like, and the ſame Advantage, Benefit and Remedies by Action only, for not performing of other Conditions, (f) Covenants or Agreements contained and expreſſed in the Indentures of their ſaid Leaſes, Demiſes or Grants, againſt all and every the ſaid Leſſees and Farmers, and Grantees, their Executors, Adminiſtrators and Aſſigns, as the ſaid Leſſors or Grantors themſelves, or their Heirs or Succeſſors ought, ſhould or might have had or enjoyed at any Time or Times, in like Manner and Form, as if the Reverſion of ſuch Lands, Tenements or Hereditaments had not come to the Hands of our ſaid Sovereign Lord,

* So that this extends to all Aſſignees whatſoever.

And all Grantees or Aſſignees their Executors and Aſſigns.

Shall have like Advantages againſt the Leſſees, their Executors, &c.

For Non-payment of Rent, Waſte, and other Forfeitures.

And alſo the Remedies by Action only for not performing the Conditions, Covenants and Agreements in the Leaſes.

Againſt Leſſees and Grantees, their Executors and Aſſigns.

As the Leſſors or the Grantors might.

(b) If the Leſſor bargains and ſells the Reverſion by Deed inrolled in Conſideration of Money, the Bargainee is an Aſſignee within the Statute. *Co. Lit.* 215. *a. Godb.* 162. 1 *Rol. Rep.* 80. *Owen* 151. 2 *Bulſt.* 181. 1 *Leon.* 252. *Moor* 93. *pl.* 230. *Cro. Eliz.* 833. *Moor* 98.

Bargainee by Deed inroll'd, in Conſideration of Money, is an Aſſignee within the Statute.

But he ſhall not take Advantage to enter upon the Leſſee for a Condition broken without giving Notice of the Bargain and Sale. *Co. Litt.* 215. *b.* 5 *Co.* 113. *b. Secus* of a Covenant. *Godb.* 262. *Cr. Jac.* 476. *Bridg.* 130.

But cannot enter for Condition broke, without Notice of the Bargain and Sale.

So if the Leſſor grants his Reverſion to the Uſe of *A.* and his Heirs, *A.* is a ſufficient Aſſignee within the Statute. *Co. Lit.* 215. *b. Moor* 98. 4 *Leon.* 27, 29.

So that if a Reverſion is granted to the Uſe of *A.* and his Heirs, he is an Aſſignee.

(c) The Statute is general, *viz.* That the Grantee of the Reverſion of every common Perſon as well as of the King, ſhall take Advantage of Conditions for Non-payment of Rent, &c. *Co. Litt.* 215. *a.*

Aſſignee of the Reverſion of a Copyhold Eſtate ſhall take Advantage of Covenants upon this Statute. 3 *Lev.* 327.

So is an Aſſignee of the Reverſion of a Copyhold.

At the Common Law, if a Man had made a Leaſe for Life, reſerving a Rent, and

Leaſe for Life, and if Rent is behind, to re-enter.

**or as our ſaid Sovereign Lord and his Heirs and Succeſſors ſhould & might have had and enjoyed (g) in certain Caſes by Virtue of the Act (h) made at the firſt Seſſion of this preſent Parliament, if no ſuch Grant by Letters Patent had been made by his Highneſs.**

and if the Rent be behind, a Re-entry, and the Leſſor had granted the Reverſion over, the Grantee might diſtrain for the Rent, but he could not take Advantage of the Condition; but now he hath the ſame Remedy as the Leſſor might have had, if it had not been aſſigned. *Co. Litt.* 215. *a.*

Grantee of the Reverſion at the Common Law might diſtrain for the Rent, but could not enter for the Condition broken; but now he may by this Statute.

(d) The Statute ſpeaking only of Leſſees, doth not extend to Gifts in Tail, *Co. Litt.* 215. *a.* nor to Covenants upon Eſtates in Fee, or in Tail, but only on Eſtates made upon Leaſes for Lives or Years. *Cr. El.* 864. *pl.* 40.

This Statute extends not to Gifts in Tail.

Nor to Covenants on Eſtates in Fee or in Tail.

(e) A Man leaſes by Indenture, the Leſſee covenants for himſelf and his Executors (not Aſſigns) to repair the Houſe; Covenant lies againſt the Aſſignee, tho' not named, it being for the Support of the Premiſſes demiſed. 5 *Rep.* 24. *b.*

Covenant for Repairs lies againſt Aſſigns, tho' not named in the Leaſe.

Covenant was brought againſt an Aſſignee of a Leſſee for Rent; he pleads that he aſſigned to *J. S.* before any Rent due; and held a good Plea, becauſe it is ſuch a Covenant which runs with the Land, 2 *Jac.* 2. *B. R. Carth.* 177. 1 *Salk.* 80, 81. 2 *Vent.* 228. *Lucas* 158. the Aſſignee being only chargeable in Reſpect of the Privity of Eſtate; but it will lie againſt the Leſſee upon his Covenant. See *Cr. El.* 328. *pl.* 1. 2 *Lev.* 233. *Cr. Jac.* 309. *pl.* 8. 522. *pl.* 7. *Bret* & *Cumberland.*

Covenant for Rent againſt an Aſſignee, who pleads he aſſigned before the Rent due, and good.

But it will lie againſt the Leſſee.

Where there is Leſſee for Years, and the Reverſion is granted for Years, the Grantee for Years ſhall have the ſame Benefit of the Condition as the Grantor ſhould have had in reſpect of the Word *Executors*. *Co. Litt.* 215. *a.*

Grantee for Years of a Reverſion on a Leaſe for Years may take Benefit of a Condition.

But where there is Leſſee for Years, and he grants Part of his Term to another, and afterwards by Bargain and Sale for Money grants his Reverſion to another, this will not veſt in the Grantee without Attornment; * becauſe the Statute of Uſes extends only to Eſtates granted by a Perſon ſeiſed; and here he who granted the Reverſion was only poſſeſſed, *Jones* 277, 232. *Raym.* 487.

But if Leſſee grant Part of his Term, and after, by Bargain and Sale for Money grant the Reverſion of it; that veſts not in the Grantee without Attornment.

But if a Man ſeiſed of Land in Fee grants, bargains and ſells it for Years, in Conſideration of Money, here the Statute of Uſes veſts the Poſſeſſion in the Leſſee without Attornment; becauſe the Leſſor is ſeiſed of the Reverſion, and in the other Caſe he is only poſſeſt, and ſo not within the Statute, 2 *Rich.* 35. *Vide* Title *Reverſion.*

But if Grantor ſeiſed in Fee for Money, bargains and ſells for Years, the Statute of Uſes veſts the Poſſeſſion without Attornment.

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* Now Attornments are all gone by the Statute of 4 & 5 *Anne.*

(f) The

Grantee of Part of the Reverſion not to have Advantage of a Condition, but may have the Rent apportioned.

(f) The Grantee of Part of the Reverſion ſhall not have Advantage of the Condition, but he ſhall have the Rent upon an Apportionment. *Co. Lit.* 215. *a. Vide Tenant for Years; for Apportionment, vide poſtea* (h)

Aſſignees cannot take Advantage of every Forfeiture on a Condition, but of ſuch as are incident to the Reverſion, or to preſerve the Eſtate.

(g) Altho' the Words of the Statute are for *Non-payment of Rent, doing of Waſte, or other Forfeiture,* yet the Aſſignees ſhall not take Advantage of every Forfeiture by Force of a Condition, but only of ſuch Forfeitures as are either incident to the Reverſion, as Rent; or for the Benefit of the Eſtate, as for not doing of Waſte, or keeping the Houſe or Fences in Repair, or for preſerving of Wood, or ſuch like. 5 *Co.* 18. *Moor* 159, 243, 876. *Owen* 41. 1 *And.* 82. *Raym.* 250. 1 *Saund.* 159.

And not for Payment of a Sum in Groſs, Delivery of Corn, Wood, or ſuch like collateral Things. *Co. Litt.* 215. *b. Dy.* 304. *Mo.* 52, 243.

A Condition and Rents may be apportioned by Act in Law.

(h) By Act in Law, there may be an Apportionment of a Condition. *Co. Litt.* 215. *Stiles* 316. Alſo a Rent may be apportioned, the Manner how, *vide* 3 *Rep.* 24. *a. Co. Litt.* 147. *b.* 148. *a.* 1 *Vent.* 276. 5 *Rep.* 6. *a.* 1 *Salk.* 141. *Fareſ.* 96. 2 *Lev.* 143. *Pollex.* 141. 3 *Keb.* 500, 505, 518, 541, 557. 1. *Stat.* 11 *Geo.* 2. at the End of Title *Tenant for Years.*

Debt for a Moiety of a Rent againſt Aſſignee of a Moiety, and good.

A Leſſor brought Debt for a Moiety of the Rent reſerved on the Leaſe againſt the Aſſignee of the Moiety of the Term, and held that it well lies. *Jones* C. J. 104. *Carth.* 162.

Covenant againſt an Aſſignee of Parcel.

Covenant lies againſt an Aſſignee of Parcel. *Cr. Car.* 222. *pl.* 8. 1 *Rol. Abr.* 522. 1 *Jones* 245. So if Leſſor had granted the Reverſion of Part to *A.* and of the other Part to *B.* Covenant would lay for both. 1 *Lev.* 109. 1 *Sid.* 157. *Raym.* 80.

Covenant to repair Copyhold runs with the Land, by the Common Law. 3 *Lev.* 326. and is alſo within the Statute, as appears by the Judgment. See alſo *Cr. Car.* 24. *pl.* 17 & 44.

And that all Leſſees and Grantees for Years or Life, their Executors or Aſſigns,

ſhall have like Advantage and Remedy againſt the Grantees of the Reverſions, or of any Part,

**Moreover be it enacted by the Authority aforeſaid, That all Farmers, Leſſees and Grantees of Lordſhips, Manors, Lands, Tenements, Rents, Parſonages, Tithes, Portions, or any other Hereditaments, for Term of Years, Life or Lives, their Executors, Adminiſtrators and Aſſigns, ſhall and may have like Action, Advantage and Remedy againſt all and every Perſon and Perſons, and Bodies Politick, their Heirs, Succeſſors and Aſſigns, which have or ſhall have any Gift or Grant of the King our Sovereign Lord, or of any other Perſon or Perſons, of the Reverſion of the ſame Manors, Lands, Tenements and other Hereditaments**

for a Condition, Covenant, &c.

as the Leſſees might have had againſt the Leſſors or Grantors.

Benefit of it, and Advantage of Recovering in Value by Voucher excepted.

**taments to let, or any Parcel thereof, for any Condition (k) Covenant (l) or Agreement, contained or expreſſed in the Indentures of their Leaſe and Leaſes, as the ſame Leſſees, or any of them might and ſhould have had againſt the Leſſors and Grantors, their Heirs or Succeſſors: All Benefit or Advantages of Recoveries in Value, by Reaſon of any Warranty in Deed or Law, by Voucher or otherwiſe, only excepted.**

Grantee of a Reverſion by the Common Law, cannot take Advantage of a Condition without Attornment. But a Covenant to Uſes veſts without Attornment.

(k) If a Leaſe for Life is made, reſerving a Rent upon Condition, and the Leſſor levies a Fine of the Reverſion, the Conuſee is Grantee or Aſſignee of the Reverſion, but without Attornment he ſhall not take Advantage of the Condition; * For the Makers of the Statute intended to have all neceſſary Incidents obſerved, and not to ſupply any Defects. *Co. Litt.* 215. *a.* 5 *Rep.* 112, 113.

* This is in Caſe of a Covenant at the Common Law, and not by the Statute of Uſes; for Uſes veſt without Attornment; and all Attornments are now taken away by the 4 & 5 *Annæ. Vaugh.* 50. 6 *Rep.* 68. *a. b.*

In a Bargain and Sale, the Statute of Uſes executes the Poſſeſſion of the Reverſion, without Attornment.

In a Bargain and Sale inrolled the Uſe paſſes from the Party, and the Statute of Uſes executes the Poſſeſſion, and the Party hath no Remedy to compel Attornment, neither is there any Default in him, and therefore the Reverſion ſhall be in him without Attornment. 6 *Rep.* 68. *b.* Nay the Book goes further, and ſays, *Note,* A good Reſolution for all Conveyances on Conſideration of Marriage, Bargain and Sale inrolled or otherwiſe, upon Limitation of Uſes, upon Fines levied, or Recoveries, whereby there is great Safety to thoſe to whoſe Uſes they are levied; which is alſo good for the Commonwealth, that thoſe in Reverſion ſhall not be barred from recovering their Rents, which in all Equity and Reaſon are due to them, and no Inconvenience to the particular Tenant. For upon the Execution of Eſtates by the Statute of Uſes, as Covenants in Conſideration of Blood, or upon Bargain and Sale inrolled, &c. there needs no Attornment. 6 *Rep.* 68. *a.* 69. *b.* † *Note,* Though now there needs no Attornment, * yet the Bargainee ſhall not take Advantage of a Condition until Notice be given the Tenant of his Bargain and Sale; and this is by the Statute of 4 & 5 *Anna.*

† This was before the Statute of 4 & 5 *Anna,* c. 16. §. 9.

* By Virtue of the Statute of 4 & 5 *Anna.*

Covenant to do a Thing, Part of the Premiſſes, goes with the Land, and ſhall bind the Aſſignee, tho' not expreſly bound.

(l) When the Covenant extends to a Thing *in eſſe,* that is Parcel of the Demiſe, the Thing to be done by Force of the Covenant is *quodammodo* annexed and appurtenant to the Thing demiſed, and ſhall go with the Land, and bind the Aſſignee, altho' he is not bound by expreſs Words. 5 *Rep.* 16. *a. b.* 24. *a. b. Godb.* 270.

But where a Covenant extends to a Thing which had not Eſſence at the Time of the Demiſe made, this cannot be appurtenant or annext to the Thing which had not Eſſence; as if the Leſſee covenants to repair * the Houſes demiſed to him during the Term, this is Parcel of the Contract, and extends to the Support of the Thing demiſed, and ſhall bind the Aſſignee, altho' he is not expreſly bound by the Covenant. *Vide Styles* 407. *Bromfield* and *Sir John Williamſon*, where it is held, That an Aſſignee, though not ſtrictly ſo according to the Rules of Law, yet he ſhall be accounted ſuch an Aſſignee as is to perform the Covenants.

* 5 *Rep.* 24. a. b. 1 *Roll. Abr.* 521. *Cr. Eliz.* 457. *Moor* 399.

But not a Covenant to do a Thing not *in eſſe* at the Time of the Demiſe.

But where the Covenant concerns a Thing which was not *in eſſe* at the Time of the Demiſe, but is to be done afterwards; this ſhall bind the Covenantor, his Executors and Adminiſtrators, but not his Aſſigns; for the Law will not annex a Covenant to a Thing, which hath not a Being. 5 *Rep.* 16. *b.*

If Leſſee covenant for him and Aſſigns to do a new Thing on the Land, it will bind his Aſſigns.

If the Leſſee had covenanted for him and his Aſſigns, that they ſhould make a new Wall upon Part of the Lands demiſed, becauſe it is to be made upon the Lands demiſed, it ſhall bind the Aſſignee: For altho' the Covenant extends to a Thing to be newly created, yet it is to be made upon the Thing demiſed, of which the Aſſignee ſhall have the Benefit, and it ſhall bind him. 5 *Rep.* 16. *b.*

Covenant by Leſſee, for him and his Aſſigns, to do a collateral Act, ſhall not bind an Aſſignee.

But altho' the Covenant is for him and his Aſſigns, yet if the Thing to be done is meerly collateral to the Land, and doth not in any Sort concern the Thing demiſed; as a Covenant to build a Houſe upon other of the Leſſor's Land, than that demiſed; or to pay a Sum of Money to a Stranger: * Theſe Things are meerly collateral to the Demiſe, whereto he is Aſſignee, and ſhall no more bind him than they ſhall a Stranger. 5 *Rep.* 16. *b.*

* Leſſee Covenants to pay to the Church-wardens of *W.* 40 *s. per Annum*; his Aſſignee is not bound to pay it, it being a collateral Thing. *Cr. Jac.* 438, 439. *pl.* 10.

Nor a Covenant broke before Aſſignment.

And where a Leſſee covenanted for himſelf and his Aſſigns to rebuild a Houſe before ſuch a Time, which he did not, but after the Time expired he aſſign'd the Term: It was adjudg'd, that this Covenant ſhall not bind the Aſſignee, as it was broken before the Aſſignment. 1 *Salk.* 199. *Gouldſ.* 129. *Cr. Eliz.* 457. *Moor* 399, 400. *pl.* 523.

A Covenant in a Leaſe of Goods ſhall not bind an Aſſignee.

Where a Man demiſes a Stock of Cattle, or other perſonal Goods, for any Time, and the Leſſee covenants for him and his Executors and Aſſigns, at the End of the Term to deliver other Cattle as good, or pay ſuch a Price for them, and the Leſſee aſſigns over theſe Cattle or Goods; this Covenant ſhall not bind the Aſſignee, becauſe this is but a perſonal Contract, and there wants ſuch Privity as there is between the Leſſor and Leſſce and his Aſſigns of the Land in Reſpect of the Reverſion; but in Caſe of a Leaſe of Goods, there is not any Privity or Reverſion; but it is meerly a Choſe in Action (*) in the Perſonalty, which can bind none but the Covenantor, his Executors and Adminiſtrators, who repreſent him. 5 *Rep.* 16, 17. *a. b.* *Hard.* 88.

A Choſe in Action is not aſſignable,

(*) A Choſe in Action, or a Poſſibility is not aſſignable over. 5 *Rep.* 24 *b.* 25. *a* C. J. *Jones* 151, 152. *Co. Lit.* 214. 1 *Roll. Abr.* 376. *Skin.* 6. 1 *Jones* 150. *Raym.* 459. Tho' a Choſe in Action can't be aſſign'd to a common Perſon, yet it may to the King, and he or his Grantee, or Aſſignee, may ſue for it in their own Name. 1 *Williams* 252, 253. *Vide*, where, and how far it has been held aſſignable, *Lucas* 245.

Aſſignment of a Choſe in Action, in Equity, is a Breach of Covenant.

Where a Man covenants not to aſſign a Choſe in Action, an Aſſignment, in Equity, is a Breach of Covenant.

A Covenant to repair, binds the Leſſee, and all claiming under him

If Leſſce for Years covenants to repair the Houſes during the Term, this ſhall bind all others claiming under him; for that they are Things appurtenant to, and do run with the Land in whoſeſoever Hands the ſame ſhall be, as well thoſe who come in by Act of Law, as by the Act of the Party. 5 *Rep.* 17. *b.* *Roll. Abr.* 521. *Cr. Eliz.* 457. *Moor* 399. 5 *Co.* 24. *Godb.* 270.

An Aſſignee and the Executor of an Aſſignee, and the Aſſignee of an Executor, may have Covenant.

The Aſſignee of an Aſſignee, and the Executors of an Aſſignee, ſo the Aſſignees of Executors or Adminiſtrators of every Aſſignee, ſhall have an Action of Covenant, becauſe they are comprehended under the Word Aſſignees, 5 *Rep.* 17. *b.* *Carth.* 519. 1 *Salk.* 309. and need not ſet forth the intermediate Aſſignments. *Modern Caſes in Law and Equity* 72.

Aſſignee of a Term may have Remedy againſt Aſſignee of the Reverſion.

The Aſſignee of a Term ſhall have Remedy upon a Covenant, by Way of Retainer, againſt the Aſſignee of the Reverſion, becauſe it runs with the Land. *Cro. Car.* 137, 138. *pl.* 503. 1 *Jones* 242. *S. C.*

Aſſignee may take Benefit of a Covenant in Law

Aſſignee of a Term ſhall take Benefit of a Covenant in Law; for if the Aſſignee of a Term be evicted, he may bring an Action of Covenant againſt the Leſſor, upon the Word *conceſſi* or *dimiſi.* 5 *Rep.* 17. *a.* 4 *Rep.* 80. *b.* *Vide* 1 *Sid.* 266. 1 *Roll. Abr.* 521. *Dyer* 257. 5 *Co.* 17. *b.* 2 *Roll. Rep.* 399. *Palm.* 388. *Carth.* 98. 1 *Mod.* 113. 4 *Co.* 81. *Cr. Eliz.* 214. 2 *Leon.* 104. *Raym.* 257. —— Whether the Leſſor or a Stranger ouſt him. 1 *Roll Abr.* 519. 2 *Leon.* 104. *Cr. Eliz.* 214. but he can have no other Remedy beſide. 1 *Bac. Abr.* 532. *Letter.* C.

Covenant lies not againſt Aſſignee for Breach of Aſſignor.

Covenant lies not againſt an Aſſignee for a Breach of the Aſſignor. *Lutw.* 363.

Three Manner of Privities.

**There are three Manner of Privities.**

1. **Privity in Reſpect of the Eſtate only.**
2. **Privity in Reſpect of Contract only.**
3. **Privity in Reſpect of Eſtate and Contract.**

1. Privity of Eſtate only.

1. Privity of Eſtate only is where the Leſſor grants over his Reverſion: There, between the Grantee and Leſſee, there is only Privity of Eſtate. 3 Rep. 23. a.

2. Privity of Contract only.

2. Privity of Contract is a perſonal Privity only, and extends only to the Perſon of the Leſſor, and to the Perſon of the Leſſee: As when the Leſſee aſſigns over his Intereſt, yet the Privity of Contract remains between the Leſſor and Leſſee, as to the Action of Debt. (a) 3 Rep. 23. a.

Where the Action of Debt for the Rent is to be laid.

(a) So long as the Privity of Contract remains, an Action of Debt may be brought for the Rent any where; but when the Privity of Contract is gone, and only the Privity of Eſtate remains, there it muſt be brought in the County where the Land lies. 1 *Bac. Abr.* 34. *Letter* A. *Cr. Cha.* 183. *Latch* 187. 1 *Jones* 43. *Hob.* 37.*

* But when the Privity of Contract is gone, then the Land is only Debtor.

After Leſſor has accepted his Leſſee's Aſſignee, he cannot have Debt for the Rent, but he may have Covenant againſt his Leſſee.

But in the Caſe of an Action of Covenant, the Statute transfers the Privity of Contract, for an Action of Covenant is not like an Action of Debt for Rent: For if the Leſſee aſſigns over his Term, and the Leſſor accepts of the Aſſignee for his Tenant, the Leſſor cannot bring Debt for Rent againſt his firſt Leſſee, by Reaſon of his Acceptance, which hath extinguiſhed the Privity of Contract. 3 *Co.* 24. *b. Moor* 600. *pl.* 829. 2 *And.* 133. 1 *Sid.* 432. But yet in ſuch Caſe, the Leſſor ſhall after his own Acceptance maintain an Action of Covenant againſt his firſt Leſſee. 1 *Saund.* 240. *Cro. Jac.* 521, 522. *pl.* 7. 2 *Saund.* 181. 3 *Lev.* 233. *Carth.* 178.

3. The third Privity is of the Eſtate and Contract both together; as between Leſſor and Leſſee themſelves, when neither Leſſor nor Leſſee have convey'd any Part of their Eſtate, there is Privity of Eſtate and Privity of Contract both ſtill ſubſiſting together, and by neither Party deſtroyed.

Grantee of the Reverſion cannot have Debt againſt the Leſſee.

So if after the Aſſignment, the Leſſor grants over his Reverſion, the Grantee ſhall not have Debt againſt the Leſſee, for the Privity of Contract, as to the Action of Debt, is gone. (a) 5 Rep. 23. b. Poph. 55. 1 Brownl. S. C. Cr. Eliz. 356. cited, Moor 351. cited, but vide Cr. Eliz. 636. and 3 Lev. 233. For that holds only between the Leſſor himſelf and the Leſſee himſelf.

Aſſignee is Debtor in Reſpect of the Land.

(a) Foraſmuch as the Rent iſſues out of the Land, the Aſſignee who has the Land, and is privy in Eſtate, is Debtor in Reſpect of the Land. 3 *Rep.* 22. *b.*

But Leſſor's Aſſignee may have an Action of Covenant.

But an Action of Covenant he ſhall well have for the Rent, if there is a Covenant in the Deed to pay the Rent. 5 Rep. 16, 17. a. b. 1 Saund. 240. Cro. Jac. 521, 522. 1 Sid. 266. 6 Mod. 194. For the Privity of Contract is tranſferred to the Grantee or Aſſignee, by the Statute 32 Hen. 8. c. 34. Carth. 183. 3 Lev. 154. And the Words, Yielding and Paying, make an expreſs Covenant, and not a Covenant in Law. Styles 406, 407, 431. 2 Bronwl. 215. 1 Sid. 266, 401. 2 Mod. 92. 1 Vent. 10. 2 Jones 102. 3 Lev. 155.

If Leſſor enters for Condition broken, the Eſtate is determined, yet he may have Debt for the Rent.

If the Leſſor enters for a Condition broken, now is the Eſtate determined, but the Leſſor ſhall have Debt for his Rent due before the Condition broken. 3 Lev. 23. b.

Grantee of the Reverſion cannot have Debt againſt Aſſignee of Leſſee, but he may have Covenant.

Leſſee for Years aſſigns over his Term, and afterwards the Leſſor by Bargain and Sale inrolled ſells the Reverſion; the Bargainee ſhall not have an Action of Debt againſt the Leſſee,

(a) becauſe there is no Privity between them. 3 Rep. 23. b. 24. a.

But may have Covenant or diſtrain.

(a) But he may bring an Action of Covenant, or diſtrain for his Rent. *Cro. Jac.* 521, 522. *pl.* 7. 1 *Saund.* 240. See 3 *Mod.* 336, 337, 338.

Leſſor has Election either againſt the Leſſee or Aſſignee, but Acceptance of the Rent of the Aſſignee, determines his Election.

Leſſee for Years aſſigns over his Term; the Leſſor may charge the Leſſee, or his Aſſignee, at his Election; and therefore if the Leſſor accepts the Rent of the Aſſignee, he hath determined his Election, and he ſhall not have an Action of Debt afterwards againſt the Leſſee for Years, for the Rent due after the Aſſignment. (b) 3 Rep. 24. b. Vide infra.

Yet may have an Action of Covenant after Acceptance.

Acceptance of Rent is ſufficient Notice of the Aſſignment.

(b) By Reaſon of his own Acceptance, by which he hath extinguiſhed the Privity of the Contract: But the Leſſor, after his Acceptance, ſhall maintain an Action of Covenant for his Rent. 1 *Saund.* 240, 241. *Cr. Jac.* 521. *pl.* 7. 334. *pl.* 1. *Cr. Car.* 580. *pl.* 3. And alſo that his Acceptance of the Rent, ſhall be a ſufficient Notice of the Aſſignment. *Cr. Jac.* 334. *pl.* 1. 398. *pl.* 4. 2 *Bul.* 152. 1 *Roll. Rep.* 366. But tho' he refuſes to accept the Aſſignee as his Tenant, yet, if he thinks proper, may afterwards charge him in an Action for the Rent. 2 *Saund.* 181. *Vide* where Covenant was brought againſt the Leſſee after Aſſignment of the Term upon an expreſs Covenant for Non-Payment, and held good; and that the Acceptance of the Aſſignee as Tenant did not hurt. 3 *Lev.* 233. *Carth.* 178.

Leſſor aſſigns the Reverſion, and after releaſes to Leſſee all Covenants.

Leſſor aſſigns over his Reverſion, and afterwards, before any Rent due, (c) releaſes to the Leſſee all Covenants and Demands.

(c) If the Releaſe had been before the Action attach'd in the Aſſignee, it had been a Bar. *Cr. Car.* 503. *pl.* 4. *T. Jones* 102, 406. 2 *Lev.* 206.

The Releaſe is no Bar, being made after the Aſſignment.

The Aſſignee brings an Action of Covenant for the Rent, and the Leſſee pleads this Releaſe; and adjudged that the Releaſe ſignified nothing; for it being made after the Aſſignment, it was no Bar, for this Covenant goes along with the Reverſion. C. J. Jones 102. Cr. Car. 503. pl. 4. Lucas's Rep. 158.

Leſſee cannot diſcharge himſelf or Executors, from a ſpecial Covenant,

but Aſſignee of the Reverſion may take Advantage of it.

No Acceptance of Rent of the Aſſignee, diſcharges Leſſee of his Covenant to repair.

No Act of the Leſſee can diſcharge himſelf or his Executors (a) from a ſpecial Covenant; of which alſo the Aſſignee of the Reverſion ſhall take Advantage, per Statute 32 H. 8. C. J. Jones 144.

(a) Covenant by Leſſor againſt Leſſee; and the Leſſee covenants for himſelf and his Aſſigns to repair: The Defendant pleads an Aſſignment to *J. S.* and that the Plaintiff accepted of him for his Tenant; and that the Houſe was in good Repair at the Aſſignment. The Court held, that the Action lay againſt the Leſſee upon this Covenant, notwithſtanding the Aſſignment. *Cr. Car.* 580. *pl.* 3. 1 *Roll's Abr.* 522. *Cr. Ja.* 309, 521. 1 *Roll. Rep.* 359. 2 *Rol. Rep.* 63. *Popl.* 136. *Godb.* 276. *Cr. Car.* 188. 1 *Jones* 223. 1 *Saund.* 240. 1 *Brownl.* 20. *Styles* 300. 2 *Mod.* 139. 1 *Sid.* 402, 447. 2 *Keb.* 640. It lies either againſt the Aſſignee at Common Law, becauſe the Covenant runs with the Land, or againſt the Leſſee at the Leſſor's Election. *Bro. Cov.* 32. 1 *Jones* 223. *Cr. Ja.* 523. But an Action of Debt for Rent would not have lain, where the Leſſee aſſigns over his Term, and the Leſſor accepts of the Aſſignee as his Tenant. *Vide anten*, & 1 *Saund.* 240, 241. *Litt. Rep.* 53. & *Cr. Jac. Brett* and *Cumberland's Caſe.*

Debt lies againſt an Executor after his Aſſignment for Rent due afterwards.

Leſſee for Years rendring Rent, makes his Executor and dies; the Executor aſſigns over the Term; the Leſſor brings Debt againſt the Executor for Rent incurr'd after the Aſſignment; and held, that the Action lies, becauſe the Executor ſhall be charged for Rent after his Aſſignment upon the Privity of Contract, as he is the Repreſentative of the Teſtator; for as Executors are charged with other Contracts of the Teſtator as long as they have Aſſets, ſo ſhall they be with this. Cr. Eliz 555, 715. Moor 600. pl. 829. 2 And. 133. Latch 260, 261, 262. 1 Vent. 210. 3 Mod. 326. 4 Mod. 76. Noy 97. 2 Vent. 209. 1 Sid. 240. 1 Lev. 127. Poph. 120. Goulſ. 120. 3 Co. 24. a.

If Aſſets, in the *Detinet* only, and is not local;

but if he had not aſſigned, it ought to be in the *Debet* and *Detinet*, as if againſt his Aſſignee.

It was alſo adjudged, That the Action was well brought in London, altho' the Lands lie in Briſtol, becauſe it is in the Detinet only; and ſo only founded upon the Contract. But it would have been otherwiſe, had it been in the Debet and Detinet, as it ought to have been if he had not aſſigned; but after Aſſignment, it muſt be in the Detinet only againſt the Executor, and in the Debet and Detinet againſt the Aſſignee. Latch 262, 271. 3 Co. 242.

Acceptance of Rent of the Aſſignee, diſcharges the Executor.

But if the Leſſor had accepted the Aſſignee for his Tenant, then the Executor had been altogether diſcharged. 1 Sid. 266.

Tho' the Teſtator aſſigns, his Executor ſhall be charged in the *Detinet*, if Aſſets.

Altho' the Teſtator had aſſigned, yet his Executor ſhall be charged in the Detinet only, ſo long as he hath Aſſets. Ibid. Poph. 120. 1 Lev. 127. 2 Vent. 209. 3 Mod. 327. So likewiſe after Waiver of the Term. 1 Lev. 127. Allen 43.

An Executor cannot wave his Teſtator's Term, tho' of half Value, as long as he hath Aſſets.

Alſo an Executor cannot wave a Term, which his Teſtator had, except he will wave the whole Executorſhip; and altho' the Teſtator takes a Leaſe of Land, worth but 10 l. per Annum, rendring 20 l. per Annum Rent, this Contract ſhall bind the Executor as long as he hath Aſſets. 1 Roll. Abr. 603. But per Wyndham Juſtice, If the Action is brought in the Debet and Detinet, and the Executor plead Nil debet, and upon Evidence it appears, that the Land is worth but 10 l. per Annum, he ſhall have a Verdict but for 10 l. per Annum. And for the other 10 l. per Annum, he ſhall have an Action in the Detinet only: Sed quære 1 Sid. 266. 1 Vent. 171. Palm. 118. 1 Mod. 185. Cr. Eliz. 711, 712. Moor 566. 1 Brownl. 56. Cr. Jac. 411, 546. 1 Bul. 23. 2 Brownl. 206. Cr. Car. 225. Allen 34. 2 Brownl. 202. Palm. 116. S. P. Allen 76. Styles 118, 79, 52. 1 Lev. 127. 3 Co. 31.

Aſſignee of an Executor of the Leſſee, pleads to an Action of Debt, that before any Rent due, he aſſigned to *J. S.*

And gave Notice to Leſſor.

In Debt, Executor pleads Aſſignment before the Rent due, without ſaying he gave Notice, or that Leſſor accepted the Tenant, is naught.

But Covenant will lie.

Debt for Rent againſt an Aſſignee of an Executor (a) of a Leſſee: The Defendant pleads an Aſſignment by him to J. S. ſuch a Day, at which time there was no Rent due, and that he gave Notice thereof to the Leſſor before any Rent was due.

*Repl.* The Aſſignment was by Fraud; and Judgment for the Plaintiff.

The Leſſor replied that the Aſſignment was made to defraud him of his Action, by Fraud or Covin; and upon a Demurrer,

It was urged, That Fraud is not averrable in this Caſe, for that an Aſſignment is a legal Act; but it was anſwered that Fraud and Covin do make legal Acts illegal and void; (b) and accordingly Judgment was given for the Plaintiff. C. J. Jones 109. 1 Vent. 329, 331. This was afterwards queſtioned upon a Writ of Error, and the Cauſe compounded.

(a) Debt againſt an Executor for Rent, who pleads that he aſſigned over before the Day that the Rent was due; and held to be naught; for that he doth not ſay, that he gave the Leſſor Notice, or that the Leſſor accepted him for his Tenant. *Litt. Rep.* 53. 1 *Saund.* 240, 241. But Covenant would have lain, 1 *Saund.* 240, 241.

(b) It is a lawful Act for an Executor to confeſs a Judgment; yet it may be averred to be kept on foot by Fraud and Covin. 1 *Vent.* 329. *Raym.* 303, 304.

Covenant for Rent againſt Aſſignee of the Executrix of the Leſſee, who pleads Aſſignment over before Rent Arrear, will not lie.

Where Covenant was brought for Rent againſt the Aſſignee of the Executrix of the Leſſee, who pleaded, that before any Rent Arrear he aſſigned over to J. S. and on Demurrer it was held, that the Privity was deſtroyed, and the Aſſignment complete without Notice, and the Defendant diſcharged of all the Rent accrued after the Aſſignment. Carth. 177. Tovey and Pitcher. But it was held, that Defendant ought in his Plea to have ſet forth Notice given to the Plaintiff of the Aſſignment; and Judgment in C. B. was given accordingly; but upon a Writ of Error in B. R. the Judgment was reverſed. 2 Lev. 295. S. C. 1 Show. 340. S. C. 4 Mod. 71. S. C. 2 Vent. 228. S. C. 1 Salk. 81.

Aſſignee need not ſet forth Notice of the Aſſignment in his Plea.

A Leſſee cannot aſſign any more than he hath.

A Leſſee can aſſign no more than he hath; for where a Leaſe is made, excepting all Woods and Under-woods, * by this Exception the Soil it ſelf is excepted; and if the Leſſee aſſign over his Term, with the ſame Exception, this Exception is void; for the Leſſee hath nothing to do with the Land excepted, but had only a Term, which paſſed away. 5 Rep. 12. b. Godb. 116. 1 Leon. 48. S. C. Cr. Eliz. 683. Goldſ. 241.

* Vide Title *Exception.*

Two Aſſignees in Truſt for an Infant, they ſhall not be accountable each for other, but each for what himſelf receives.

Where there are two Aſſignees in Truſt for an Infant, and they both accept the Truſt, and receive the Rents for a Year and a Half, and afterwards one of them doth not intermeddle, but the other receives the whole, and becomes inſolvent, they ſhall not be accountable the one for the other, but each ſhall account for what he himſelf hath received, for it was the Fault of him who repoſed the Truſt in one who was not reſponſible. Cr. Car. 312. pl. 3.

Leſſee for Years leaſes Part of the Term, and after bargains and ſells the Reverſion of it to another, without Attornment;

Grantee cannot diſtrain, nor bring Debt for the Rent.

A Tenant for a long Term of Years, makes a Leaſe for Part of his Term, rendring a Rent, and he afterwards, for a valuable Conſideration, bargains and ſells the Reverſion of his Term to a Stranger, and there is no Attornment, the Grantee can neither diſtrain, nor bring Debt for the Rent for want of Attornment: For altho' this Reverſion is granted for a valuable Conſideration, yet it is not executed by the Statute of Uſes. (a) For that extends only where an Eſtate is granted by a Perſon ſeized. And here he who granted the Reverſion, was only poſſeſſed for a Term of Years. Ch. J. Jones 217, 232. Raym. 487. Poph. 76.

(a) And then it ſtands only as a Grant at the Common Law, to which there muſt be Attornment.*

* This was before the Stat. of 4 & 5 *Anne.*

But if Leſſor ſeized in Fee grant the Reverſion for Years, it is good without Attornment.

But when a Man ſeized in Fee grants, bargains and ſells for Years, in Conſideration of Money; here the Statute of Uſes veſts the Poſſeſſion in the Leſſee without any Attornment, becauſe the Leſſor is ſeized of the Reverſion; and in the other Caſe, he is but poſſeſſed, and ſo not within the Statute of Uſes, but only at the Common Law. 2 Rep. 35. a, b. 8 Co. 93. 2 Roll. Abr. 204. 2 Inſt. 671. Vide Title Leaſe for a Year.

Rep. to *Nil in Tenementis* in Debt for Rent, without ſetting forth the mean Conveyances from Tenant in Fee, is naught upon Demurrer, but good after Verdict.

In Debt upon a Leaſe parol, the Defendant pleaded Nihil habuit in Tenementis: The Plaintiff replies, and ſets forth, That J. S. was ſeized in Fee, and leaſed to J. D. for Ninety-nine Years, which Eſtate came to the Plaintiff by ſeveral mean Conveyances, and the Replication was demurred to; becauſe the Plaintiff did not ſet forth the mean Conveyances. There was no Judgment in it. Vide Librum, Raym. 389, 390. 1 Sid. 218. That it is good after Verdict, but naught upon a Demurrer.

# Bargain and Sale.

What it is.

A Bargain and Sale is an Inſtrument whereby the Property of Lands or Tenements is for good and valuable Conſideration granted and conveyed from one Perſon to another: It is termed a real Contract on a valuable Conſideration, for paſſing of Manors, Lands, Tenements or Hereditaments, by Deed indented and inrolled within ſix Months after the Date thereof. 2 Inſt. 612. Co. 273. 1 Inſt. 672. Kelw. 85. 1 Co. 87.

Of Deeds of Bargain and Sale by Virtue of the 27 *H.* 8. *c.* 10. of Uſes, and 27 *H.* 8. *cap.* 16. of Inrollments.

Deeds of Bargain and Sale are by Virtue of the Statute 27 H. 8. cap. 10. Of Uſes; and the Inrollment thereof by Virtue of the Statute of Inrollments made the 27 H. 8. cap. 16. which Statute of Inrollments is as followeth.

The Act for Inrolling Bargains and Sales.

No Manors, Lands, &c. ſhall paſs to make a Freehold, or any Uſe thereof, by Bargain and Sale only;

Except by Writing indented, ſealed and inrolled,

in one of the Courts of Record at *Weſtminſter*, or in the County where the Lands lie;

Be it enacted by the Authority of this preſent Parliament, that from the laſt Day of July, which ſhall be in the Year of our Lord 1536. no Manors, Lands, Tenements, or other Hereditaments, ſhall paſs, alter, or change from one to another (a) whereby any Eſtate of Inheritance or Freehold (b) ſhall be made, or take Effect in any Perſon or Perſons, or any Uſes thereof to be made, by reaſon only (c) of any Bargain and Sale thereof, except the ſame Bargain and Sale be made by Writing (d) indented, ſealed and inrolled (e) in one of the King's Courts of Record at Westminster, or elſe within the ſame County

Why it was thought few Lands would be paſſed by Bargain and Sale.

The Makers of this Act thought that very little Land would paſs by Bargain and Sale; for ſuch Bargainee ſhall never vouch by Virtue of any Warranty annexed to the Eſtate of the Land: And there is no Saving in the Act for *Ceſtuy que Uſe*, nor of any Uſe; nor doth it give any Benefit of Warranty to *Ceſtuy que Uſe*, unleſs the Uſe was executed before the Time therein limited. 1 *Rep.* 125. *a.*

Bargainor muſt be in actual Poſſeſſion, or enter and ſeal and deliver the Deed on the Land.

(a) *Note*; No Perſon can make a Bargain and Sale, that hath not the actual Poſſeſſion at the Time of the Sale. If he hath not the actual Poſſeſſion, then the Deed muſt be ſealed upon the Land, upon an Entry made before the *Cuſtos Rotulorum*, Juſtices of the Peace, and Clerk of the Peace,

within ſix Months after the Date.

To pay two Shillings for the Inrollment, if not above the yearly Value of 40 s.

And five Shillings if above 40 s. *per Ann.*

The Clerk of the Peace is to inroll it in Parchment,

and to deliver the Rolls thereof at the Year's end, to the *Cuſtos Rotulorum.*

County or Counties where the ſame Manors, Lands or Tenements, ſo bargained or ſold do lie, or before the Cuſtos Rotulorum, and two Juſtices of the Peace and the Clerk of the Peace of the ſame County or Counties, or two of them at the leaſt, whereof the Clerk of the Peace to be one: And the ſame Inrollment to be had and made within ſix Months (f) next after the Date of the ſame Writings indented; the ſame Cuſtos Rotulorum or Juſtices of the Peace, and Clerk, taking for the Inrollment of every ſuch Writing indented before them, where the Lands comprized in the ſaid Writing exceed not the yearly Value of 40 s. two Shillings; that is to ſay, twelve Pence to the Juſtices, and twelve Pence to the Clerk. And for the Inrollment of every ſuch Writing indented before them, wherein the Lands comprized exceed the Sum of 40 s. in the yearly Value, five Shillings; that is to ſay, two and Six-pence to the ſaid Juſtices, and two and Six-pence to the ſaid Clerk for the inrolling of the ſame. And that the Clerk of the Peace for the Time being, within every ſuch County, ſhall ſufficiently inroll and engroſs in Parchment the ſame Deeds or Writings indented, as is aforeſaid; and the Rolls thereof, at the End of the Year, ſhall deliver unto the Cuſtos

made for that Purpoſe; for the Entry puts the Party Grantor into Poſſeſſion, and purges Diſſeiſins, &c. *Vide* Title *Entry*, and *Carter* 161. 2 *Inſt.* 672. 3 *Leon.* 312, 387, 388. 1 *Lev.* 270, 271, 272. *Cro. El.* 483. *pl.* 19, 446, 447. *pl.* 11.

This Statute extends to Bargains and Sales, and Freeholds only, and not for Years, which are good without Inrollment.

(b) This Statute of Inrollments extends to Bargains and Sales of Inheritances and Freeholds only; and not to Bargains and Sales for Years, for they are good without Inrollment; and the Poſſeſſion paſſes by the Statute of Uſes. 2 *Rep.* 36. *a.* 8 *Rep.* 94. 2 *Inſt.* 671. 2 *Co.* 54. *Dyer* 309. 2 *Inſt.* 671. 8 *Co.* 93. 1 *Roll. Abr.* 204. Houſes and Lands in *London*, and any City, &c. are exempted out of the Statute of Inrollments. 2 *Inſt.* 676. 1 *Nelſ. Abr.* 342. *Dyer* 229. *Dalſ.* 63. *Yel.* 124.

If there is a Bargain and Sale, and a Fine or Feoffment, the Bargainee ſhall be in by the Fine or Feoffment.

(c) If a Man for Money Bargains and Sells, and before Inrollment levies a Fine, or makes a Feoffment to the Bargainee in Fee, and afterwards, within ſix Months, the Deed is inrolled; the Bargainee ſhall be in by the Fine or Feoffment both, by reaſon of the Word (*only* in the Statute) and alſo for that the Eſtate veſted by the Common Law ſhall be preferred. 2 *Inſt.* 672. 4 *Rep.* 71. *b.* 72. *a.* *Mo.* 881. 2 *And.* 3, 162, 163. 4 *Leon.* 4. *Poph.* 49. *Hob.* 122.

It muſt be made by Writing indented,

(d) It muſt be made by Writing indented, and not by Print, Stamp, or Deed Poll;

Cuſtos Rotulorum of the ſame County for the Time being, there to remain in the Cuſtody of the ſaid Cuſtos Rotulorum for the Time being, amongſt other Records of the ſame Counties where any ſuch Inrollment ſhall be ſo made, to the Intent that every Party who hath to do therewith, may reſort and ſee the Effect and Tenor of every ſuch Writing ſo inrolled.

Poll; and alſo muſt be written upon Parchment or Paper. 2 *Inſt.* 672, 373.

(c) It muſt be inrolled in Parchment only, in one of the King's Courts of Record at *Weſtminſter*, or elſe in the County where the Lands lie. 2 *Inſt.* 673.

and inrolled in Parchment in one of the Courts at *Weſtminſter*, or in the County where the Lands lie.

A Man bargains and ſells in Fee, and makes Livery, and the Deed was not inrolled; yet this ſhall paſs as a Grant, and be ſo pleaded; for a Bargain includes a Grant. *Noy* 66.

A Bargain and Sale in Fee with Livery will paſs, and may be pleaded as a Grant, without Inrollment.

(f) The ſix Months ſhall be accounted at twenty-eight Days to the Month, after the Date; ſo that the Day of the Date is excluſive. But it hath been held that if it be inrolled the very Day it bears Date, it is good enough; but the ſureſt way is to inroll it ſome Day after within the ſix Months. 2 *Inſt.* 674. *Hob.* 740. 6 *Co.* 62. *Hob.* 140. *Mo.* 40, 42. 11 *Co.* 6. *Dyer* 282. 3 *Lev.* 438. *Salk.* 413. 6 *Mod.* 260.

The ſix Months to be accounted at twenty-eight Days to the Month, from the Date excluſive.

It is good if inrolled on the Day of the Date, but ſurer if after the Date.

Neither the Death of the Bargainor or Bargainee, before the Inrollment, ſhall hinder the paſſing of the Eſtate. 2 *Inſt.* 674. *Hob.* 136. 1 *And.* 219, 337.

It is good, though the Bargainor or Bargainee die before Inrollment.

And a Releaſe by a Stranger to the Bargainee before Inrollment, ſhall be good. 2 *Inſt.* 674, 675.

A Stranger's Releaſe is good to Bargainee before Inrollment.

Where the Bargainee before Inrollment ſells the Land, and afterwards the Deed is inrolled, it is good, *ibid.* & 1 *Inſt.* 147. *b.* but *Hob.* 136. *contra.* *Cr. Ja.* 52. 2 *Inſt.* 675. 1 *Vent.* 360.

Bargainee may ſell before Inrollment.

If Commiſſioners of Bankrupt aſſign over the Land to the Uſe of the Creditors, no Eſtate paſſes until Inrollment. *Jones* C. J. 196, 197. 1 *Vent.* 206. 2 *Show. Rep.* 156. S. C. *Carth.* 178. S. P. 1 *Show.* 207.

No Eſtate paſſes by Aſſignment of Commiſſioners of Bankrupt, until inrolled,

A Bargainee ſhall have Rent which incurs after the Bargain and Sale, and before the Inrollment. *Sid.* 310. *Owen* 150. *Godb.* 209.

By this Statute, no Freehold nor Uſe, thereof paſſes by Bargain and Sale only, unleſs by Indenture inrolled.

By this Statute, no Freehold nor Uſe thereof (a) ſhall paſs by Bargain and Sale only, unleſs it be by Deed indented and inrolled, according to the Statute. Poph. 48. 2 Inſt. 675. Dyer 229. Dalt. 63.

(a) Which veſts in the Bargainee by the Statute of Uſes. *Dyer* 218. *Hob.* 136. 2 *Inſt.* 674. *Cr. Ja.* 408. 1 *Roll. Abr.* 627. *Owen* 149, 150.

But a Chattel will paſs without Inrollment.

But to a Bargain and Sale of a Chattel * there needs no Inrollment. 2 Rep. 35. a, b. 36. a. 8 Rep. 94. a. 2 Inſt. 672.

*Which is a Term for Years.

# Bargain and Sale.

A Bargain and Sale is a real Contract on a valuable Conſideration to paſs a Freehold, in Poſſeſſion, Reverſion, or Remainder, in Lands, &c. by Indenture inrolled within ſix Months, without Livery or Attornment.

If Bargainor be in Poſſeſſion, it is a ready Aſſurance.

But a Feoffment reſtores the Poſſeſſion to the Feoffor, tho' diſſeiſed.

A Bargain and Sale, is a real Contract, upon valuable Conſideration for the Paſſing of an Eſtate of Inheritance or Freehold in Poſſeſſion, (a) Reverſion, or Remainder, (b) in any Manors, Lands, Tenements and Hereditaments, by Deed indented and inrolled within ſix Months after the Date of it, without Livery and Seiſin or Attornment; (c) and if the Bargainor be in Poſſeſſion (d) this is a facile and ready Aſſurance; but a Feoffment reduceth and reſtoreth the Poſſeſſion to the Feoffor, though the Feoffor had been diſſeized. (e) 2 Inſt. 672.

(a) 2 Inſt. 672.

(b) Vaugh. 51. 8 Rep. 93, 94.

(c) Vaugh. 51. 8 Rep. 93, 94.

(d) If he is not in Poſſeſſion, the Deed muſt be delivered upon the Ground, or elſe nothing paſſes, which *Vide* in Title *Entry*.

Bargainee cannot vouch on any Warranty.

(e) Bargainee being in the *Poſt* ſhall never vouch by Force of any Warranty annexed to the Land. 1 *Co.* 125. *a.*

*Note*; The Eſtate in Law being in the Bargainor, and only an Uſe paſſed to the Bargainee.

Bargainee preſently has ſo far Poſſeſſion, to be a good Tenant to a *Præcipe*, may ſurrender, or aſſign, alien, releaſe, &c. but cannot bring Treſpaſs until actual Entry.

Upon a Bargain and Sale, the Bargainee hath preſently ſo far actual Poſſeſſion that he is a good Tenant to the Præcipe, and may ſurrender, aſſign, alien, releaſe, &c. 1 Vent. 361. But yet he cannot upon this Poſſeſſion bring Treſpaſs, until he hath made his actual Entry. (f) Carter 66, 78. W. Jones 7. 2 Cro. 604.

Tenant by Statute or *Elegit*, may bring Treſpaſs before Entry.

(f) But Tenant by *Elegit* or Statute, may (after the Land extended) bring Treſpaſs before actual Entry.

A Bargain and Sale veſts the Uſes, and the Statute of Uſes the Poſſeſſion.

The Bargain and Sale veſts the Uſes, and the Statute of Uſes the Poſſeſſion. Per Dodderidge, Juſtice, Euſtace and Scawen. Cro. Jac. 696. pl. 9. Lucas 47.

A Rent may be reſerved on a Bargain and Sale.

A Bargain and Sale may be of Land by a Deed, rendring a Rent, and the Reverſion ſhall be good: For that the Uſe and Poſſeſſion paſs uno flatu; and therefore it is all one with a Grant of the Land it ſelf. For if the Uſe paſs firſt, then the Rent cannot be reſerved out of the Uſe, and then the Reſervation of the Rent will be void. * 2 R. 54. a.

* But they paſſing both at the ſame Time, makes it good.

Eſtates on Uſes executed, ſhall be of the ſame Condition as Eſtates in Poſſeſſion at Common Law.

The Eſtate upon the Uſes executed by the Statute of Uſes, ſhall be of the ſame Condition as Eſtates in Poſſeſſion were at the Common Law; and being executed ought alſo to be ſuch of which the Common Law makes Allowance. (g) Poph. 82. Carter 209.

(g) Except only as to the bringing of Actions of Treſpaſs, which he cannot do till actual Entry. See *Carter* 66, 68. and Title *Entry*.

A Grant, Bargain and Sale, in Conſideration of Love and Affection, inrolled a Month after,

not being in Conſideration of Money, ſhall not enure as a Bargain and Sale, but as a Covenant to ſtand ſeized to Uſes.

A Man, in Conſideration of natural Love and Affection for his Daughter, and for her Preferment, did give, grant, bargain and ſell, alien, infeoff, and confirm to her and her Heirs; and about a Month afterwards, the Deed was acknowledged and inrolled. It was adjudged in the King's Bench, and afterwards upon a Writ of Error, That it not being in Conſideration of Money, ſhall not enure as a Bargain and Sale, but as a Covenant to ſtand ſeized to Uſes; and the Inrollment ſhall not hurt it, becauſe the Uſes veſted immediately upon the Sealing of the Deed, (a) and the Acknowledging and Inrollment of it was afterwards. Croſſing and Scudamore, 7 Co. 40. 2 Co. 24. Cr. Eliz. 394. 1 Vent. 137. 1 Lev. 56. Vide 1 Vent. 141. where it is held, That Words proper for a Conveyance at the Common Law, would raiſe a Uſe, as Demiſe and Grant have been adjudged to amount to a Bargain and Sale without other Words. 2 Inſt. 672. Cr. Ja. 210. Mo. 34. Cr. Eliz. 166.

The Father, in Conſideration of 100*l.* paid by his Son, covenants to ſtand ſeized to the Uſe of the Son, the Deed is not inrolled, Whether any Uſe ariſes to the Son?

It was objected in Harper's Caſe, 11 R. 24. b. That if a Father, in Conſideration of 100 l. paid by the Son, covenants to ſtand ſeized to the Uſe of the Son, no Uſe ſhall ariſe to the Son if the Deed is not inrolled, becauſe the expreſs valuable Conſideration doth take away the implied Conſideration of Blood: But the Court ſeemed to be of another Opinion. And the Lord Bridgman in Carter 144. ſaid, That in Conſideration of natural Love and Affection to my Son and of One hundred Pounds paid by him, I covenant to ſtand ſeized; I think (ſays he) the principal Conſideration, (which is natural Affection) will carry it. (b) Carter 144.

If Livery is made before Inrollment, it will make it a Feoffment.

If a Deed is acknowledged to be inrolled, and before Inrollment Livery is made, this will make it a Feoffment, and not a Bargain and Sale. 2 Inſt. 672. Vide ante.

A Deed made in Conſideration of Money, with Letter of Attorney for Livery, Inrollment makes it a Bargain and Sale.

So likewiſe if a Man, for a valuable Conſideration of Money, makes a Deed and Letter of Attorney for Livery, and afterwards the Deed is acknowledged and inrolled; this ſhall then be a Bargain and Sale. * 2 Rolle 787. 2 Inſt. 671, 672.

No After-Act can make a good Deed void.

No After-Act in any Caſe whatſoever ſhall make a good Deed void. Ibidem.

(a) In ſome Caſes, Ceremonies done after the Sealing of the Deed, ſhall make it operate otherwiſe than it ſhould have done without them. *Carter* 209.

(b) And ſo adjudged by all the Judges between *Lade* and *Barker*, 2 *Ventr.* 266.

* No Livery being made.

I It

A Grant, Bargain and Sale in Conſideration of Money, with Letter of Attorney for Livery, if Livery is made before Inrollment, it ſhall paſs by Livery.

If a Man, in Conſideration of Money, makes a Deed of Gift, Grant, Bargain and Sale of his Lands to another and his Heirs, with a Letter of Attorney to make Livery; if Livery be thereupon made before Inrollment, the Eſtate ſhall paſs by the Livery, and not by the Inrollment. Poph. 49. 2 Inſt. 672.

A Bargain and Sale may be inroll'd after the Party's Death.

A Bargain and Sale may be inrolled after the Death of the Bargainor or Bargainee, 1 Inſt. 674. Hob. 196. And it paſſes the Eſtate ab initio. Hob. 136, 222. 1 And. 229, 337.

A Bargain and Sale to *A.* another to B. If the Deed to *A.* is not inrolled, the Deed to *B.* is good, if inrolled: But if the Deed to *A.* is inrolled within ſix Months, the Deed to B. is void.

Where I make a Bargain and Sale to A. and before Inrollment I make another Bargain and Sale to B. of the ſame Land, and the Deed to B. is firſt inrolled: If the Deed to A. is not inrolled within ſix Months, then the Bargain and Sale to B. (whoſe Deed is inrolled) is good: But if the Deed to A. is inrolled within the ſix Months, then the Deed to B. is void. Hob. 165. Moor, fo. 41. 1 Cro. Car. 217, 218. pl. 2. 284. pl. 27.

Bargainor and Bargainee grant a Rent-charge.

After Inrollment it is the Grant of the Bargainee, and Confirmation of the Bargainor.

A. bargains and ſells to B. and before Inrollment they both grant a Rent-charge to C. and afterwards the Indenture is inrolled; here the Grant is good. And after the Inrollment, by the Operation of the Statute, it ſhall be the Grant of B. and Confirmation of A. But if the Deed had not been inrolled, then it had been the Grant of A. and Confirmation of B. 1 Inſt. 147. b.

## *A Deed of Bargain and Sale.*

A Deed of Bargain and Sale.

THIS Indenture (a) made (b) the 20th Day of December in the 14th Year of the Reign of our Sovereign Lord George the ſecond, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and ſo forth, and in the Year of our Lord 1740. Between W. W. of W. in the County of L. of the one Part, and R. D. of W. aforeſaid, in the County aforeſaid, Yeoman, of the other Part, Witneſſeth, That for and in Conſideration (c) of the Sum of

The Conſideration.

twenty

Every Indenture muſt be actually indented.

(a) Where a Deed begins *This Indenture*, it muſt be actually indented, or elſe it will be a Deed Poll: For it is not the Words, but the actual Indenting of the Parchment or Paper, that makes it an Indenture. 5 *Rep.* 20. *b.*

(b) For the eight ſeveral Parts requiſite to make a formal or orderly Deed, ſee in Title *Feoffment*, and 1 *Inſt.* 6. *b.*

Bargain and Sale mentioned in Conſideration of Money, tho' not paid, is good.

(c) If the Deed make Mention of Money paid, and in Truth no Money is paid, yet the Bargain

and

twenty Pounds of lawful Money of Great Britain, by him the ſaid R.D. to him the ſaid W. W. in Hand paid before the Sealing and Delivery hereof, the Receipt whereof (d) he the ſaid W. W. doth hereby acknowledge, and thereof acquit

and Sale is good. And no Averment will lie againſt this which is expreſsly affirmed by the Deed, unleſs it comes to be queſtioned, whether fraudulent or no, upon the Statute againſt *Fraudulent Conveyances*, which ſee in Tit. *Feoffment*. For the Affirmative is prov'd by the Deed, and it is impoſſible to prove the Negative. *Mo.* 378.

Alſo any valuable Conſideration in Money, or ſuch other Conſideration as would have raiſed a Uſe at the Common Law. 2 *Inſt.* 672. But the beſt Way is to mention a Conſideration of Money, which though but 10*s.* or 20*s.* is ſufficient to paſs an Eſtate; but a general Conſideration will not raiſe a Uſe. 1 *Rep.* 175. *a.* 176. *b.* *Mo.* 578, 378. 7 *Rep.* 40. 11 *Rep.* 24, 25.

**Formerly a Conſideration might be averred, though no Conſideration expreſſed.**

A Conſideration might formerly have been averred, although no valuable Conſideration was expreſſed in the Deed. 2 *Inſt.* 672. But *quære* if it can be ſo now, ſince the Statute of *Frauds* and *Perjuries*. And vide *Fitz-Gibbons* 297. and *Caſes in Chancery* and *King's Bench* from 4 to 7 *Geo.* 2. 107. S. C. 2 *Williams* 204.

**No Conſideration, but for Love and Affection, will now raiſe a Uſe.**

There are no Conſiderations at this Day to raiſe Uſes upon Covenants, but natural Love and Affection, which is for Advancement of Blood and Conſideration of Marriage, which is the Joining of the Blood and Marriage together.

**Conſideration of Money, &c. tho' to ſtand ſeized to Uſes, are Bargains and Sales.**

And other Conſiderations, as Money for Land, *&c.* though the Words be *Stand ſeized to Uſes*; yet they are Bargains and Sales. *Carter* 139. 7 *Co.* 40. 2 *Co.* 24. *Cr. Eliz.* 394. 1 *Vent.* 137. 1 *Lev.* 56. Vide Title *Uſes.*

**The general Receipt is good, unleſs for a conſiderable Sum.**

(d) The general Receipt for the Conſideration is ſufficient; but if the Sum is conſiderable, as a valuable Purchaſe for the Land, there if the Deed is called in Queſtion, whether fraudulent, or no? it is of abſolutely Neceſſity to prove either Payment of the Money, or a Receipt under Hand and Seal, or elſe indorſed on the Back-ſide. *Note*; In pleading a Bargain and Sale, the Party ought regularly to aver Payment of the Money. 1 *Leon.* 130. *Moor* 304. 1 *Lev.* 308.

**Then muſt prove Payment or Receipt under Hand and Seal, or indorſed on the Deed.**

It is not ſufficient to ſay, *For divers good Cauſes and Conſiderations:* But a Conſideration may be averred, (1 *R.* 176. *a.*) then, but *quære* now, ſince the Statute of *Frauds*. *Vide Fitz-Gibb.* 297. and *Caſes in Chan. and K. B. from* 4 *to* 7 *Geo.* 2. 107. S. C.

The Bargain and Sale.

quit and diſcharge the ſaid R. D. his Heirs, Executors and Adminiſtrators, He the ſaid W. W. hath granted, bargained and ſold, and by theſe Preſents doth grant, bargain and ſell (e) unto the ſaid R. D. his Heirs and Aſſigns, all that his Cloſe of Paſture Land called Short-Cloſe, containing by Eſtimation ten Acres, be the ſame more or leſs, ſituate, lying and being in W. aforeſaid in the ſaid County of L. and the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues and Profits thereof, and of every Part and Parcel thereof,

The Words *Bargain and Sale* are not neceſſary, but other Words may be uſed.

(e) Tho' it is good and very proper that the Words *Bargain and Sale*, (they being the Words mentioned in the Statute of *Inrollments*,) be in the Deed, yet they are not of abſolute Neceſſity; for other equivalent Words may be uſed to take Effect by that Statute: For whatſoever Words upon valuable Conſiderations, would have raiſed a Uſe at Common Law, the ſame do amount unto a Bargain and Sale within the Statute. As where a Man, by Deed indented and inrolled, covenants in Conſideration of Money to ſtand ſeized to the Uſe of his Son in Fee; this, by Reaſon of the Inrolment, is a good Bargain and Sale, and yet there is not one Word of Bargain and Sale in the Deed. *Carter* 66, 78. 2 *Inſt*. 672. *Cr. Ja*. 210. *Mo*. 34. *Cr. Eliz*. 166. The Words *Demiſe and Grant* have been adjudged to amount unto a Bargain and Sale without other Words. 1 *Vent*. 141. and *Barker* and *Keate*, 1 *Mod*. 1. *Cr. Eliz*. 166.

What Words are held to be good in a Bargain and Sale.

So if a Man for Money aliens and grants Lands to one and his Heirs, or in Tail or for Life, and the Deed is inrolled, this amounts unto a Bargain and Sale, and the Purchaſer ſhall be in Poſſeſſion to accept of a Releaſe, or be Tenant to the *Præcipe* without Livery, but cannot bring Treſpaſs till actual Entry. *Carter* 66, 78.

How it was in Caſe of a Bargain and Sale at the Common Law before the Statute.

At the Common Law before the Statute of *Uſes*, if a Man for Money had aliened and granted Land to a Man and his Heirs, by this the Uſe of the Land would paſs; for this is a plain Bargain. 8 *Rep*. 94. *a*. *Carter* 209. But there was no other Way to execute this Uſe but in Chancery. *Bro. Feoffment to Uſes* 33. *Hard*. 468. *Poph*. 72.

27 *H*. 8. *cap*. 10.

Uſes are now to be conſtrued according to the Common Law.

But when Uſes and Conveyances to Uſes came to be frequent, many Inconveniences were introduced; to prevent which, the Statute of 27 *H*. 8. *c*. 10. was made, by which the Uſe was united to the Poſſeſſion: For before that Statute, Uſes were to be executed according to the Rules of Equity; but now they are reduced to the Common Law, and are of more Certainty, and therefore ſhall be conſtrued

Habendum.

of, with the Appurtenances: (a) To have and to hold (b) the ſaid Cloſe of Paſture called S. ſituate, lying and being in W. aforeſaid in the ſaid County of L. with the Appurtenances, unto the ſaid R. D. his Heirs and Aſſigns, To the only Uſe and Behoof * of the ſaid R. D. his Heirs and Aſſigns

The Uſe.

*Note; It is abſolutely neceſſary to put in theſe Words.

ſtrued according to the Rules of the Common Law. *Per North* C. J. 2 *Mod.* 251.

What will be a ſufficient Conſideration to change a Name.

But if a Man in Conſideration of 5*s.* paid by *J. S.* a Stranger, and that the Stranger will change his Name to the Covenantor's Name, doth covenant to ſtand ſeized to the Uſe of the Stranger, and there is no Inrollment: It is a Queſtion, Whether any Uſe will riſe, the Conſideration not being a Condition precedent? And I cannot find how Judgment was given in it. *Carter* 137, 138.

It paſſes the Freehold of Seigniories, Lands, Rents, &c. Reverſions and Remainders.

(a) A Bargain and Sale inrolled, paſſes not only the Freehold of Seigniories, Lands, Rents, &c. but alſo of Reverſions and Remainders; and there needed no Attornment in theſe Caſes before the Statute of 4 & 5 *Ann.* becauſe the Bargainee is in by the Statute of 27 *H.* 6. which transfers the Eſtate to the Uſe, and ſo is in by Act of Law. *Vaugh.* 57. 8 *Rep.* 93, 94. 1 *Inſt.* 309. *b.* Neither doth there need any Attornment in Caſes of Bargains and Sales for Years. Thoſe veſted by the Statute of *Uſes* without Attornment, where the Bargain and Sale is made by him who hath the Fee, not him who hath only a Term for Years, becauſe the Statute executes only a Freehold. 8 *Rep.* 93, 94. *Hayward*'s Caſe. 2 *Roll. Abr.* 204. 2 *Inſt.* 671. 2 *Co.* 35, 36. *Poph.* 26.

8 *Rep.* 93, 94. 2 *Rep. Hayward's* Caſe.

What Eſtate a general Grant makes.

(b) If a Man grant a Rent, and ſay no more, thoſe Words create no more than an Eſtate for Life: But if the *Habendum* is for Years, this qualifies the general Words. *Hob.* 170. *Co. Litt.* 183. 2 *Co.* 24. *a.* 55. 2 *Roll. Abr.* 65, 66. *Cr. Eliz.* 254. 8 *Co.* 154.

Where an Eſtate-Tail and Fee expectant.

So if Lands are given to one and his Heirs, *Habendum* to him and the Heirs of his Body, he ſhall have but an Eſtate Tail and no Fee Expectant; for the *Habendum* qualifies the general Words precedent. 8 *Co.* 154. *Co. Litt.* 21. *a. Litt.* 345.

Where the Premiſſes and *Habendum* differ.

But if Lands in the Premiſſes are to a Man and the Heirs of his Body, *Habendum* to him and his Heirs, there he hath an Eſtate Tail and Fee Expectant, which agrees with the Rule, That *generalis Clauſula non porrigitur ad ea quæ antea ſpecialiter ſunt comprehenſa.* 8 Rep. 154. b.

What the *Habendum* may do.

The *Habendum* may enlarge the Premiſſes, but not abridge them. *Co. Litt.* 299. *a. Plow. Com.* 197. 2 *Co.* 23. See in Tit. *Habendum.*

If in your Premiſſes you have given no certain Eſtate, you may alter, abridge, or fruſtrate it by the *Habendum. Vide Rector de Chuddington's* Caſe, 1 *Co. Rep.* 1.

ſigns for ever, (a) In Witneſs, &c.

A Bargain and Sale cannot be to one to the Uſe of another.

(a) A Bargain and Sale of Lands for Money cannot be to one Man, to the Uſe of another; for a Uſe cannot be upon a Uſe: But it muſt be to the Bargainee only. *Poph.* 81. *Dyer* 155.

On a Bargain and Sale for Money, the Uſes to others are void.

If a Man bargains and ſells his Land for Money by Deed inrolled, To hold to the Bargainee in Fee, to the Uſe of the Bargainor for Life, *&c.* or to the Uſe of any other; this Limitation of the Uſes is void; and it ſhall be to the Uſe of the † Bargainee in Fee. *Bendl. Rep.* 61. *Dyer* 155.

† Becauſe the Conſideration and Sale implies the Uſe to be to him only.

For Covenants in Bargains and Sales, you may find in Title Covenants.

The Manner of inrolling Deeds in the King's Bench.

The Manner of Inrolling of a Deed in the Court of King's Bench is thus:

The Deed muſt be acknowledged by any one of the Parties, Grantors in the Deed, either in the Court of King's Bench, * or before a Judge of the Court of King's Bench at his Chamber †; and if it is acknowledged in Court, the Secondary asks the Party who acknowledges it, whether he doth acknowledge the Deed to be his Deed? and if he ſays he doth, then he asks him whether he deſires that it be inrolled? if he ſays he doth, then the Secondary writes upon ſome Part of the Deed theſe Words, Acknowledged in the Court of our Sovereign Lord *George* the Second, now King of *England*, *&c.* before the King himſelf at *Weſtminſter*, on the —— Day of —— in the —— Year of his Reign, by the abovesaid *A. B.*

*By the Court.*

* On the Plea Side. *Salk.* 389. Lady *Anderſon*'s Caſe.

† Baron and Feme came to acknowledge a Deed in Court, the Court ordered the Acknowledgment of the Husband only to be entered *Mod. Caſes* 263.

The *Caption* in Court.

Then the Manner of inrolling it is thus:

The Form of the Inrollment when acknowledged in Court.

England, to wit, BE it remembered, that on the —— Day of —— in the ſame Term before our Lord the King at Weſtminſter, came A. B. of C. in the County of Middleſex, Gent. in his proper Perſon, and brought here into the Court of our ſaid Lord the King now, before the King himſelf at Weſtminſter, his certain Indenture which he acknowledged to be his Deed, and prayed, that the ſaid Indenture in the Court of our Lord the King now, before our ſaid Lord the King at Weſtminſter, might be inrolled on Record; and it is inrolled in this Form which followeth, to wit, This Indenture, &c. And ſo inroll it *verbatim.*

Afterwards you muſt write upon the Back of it in Text-Hand this Indorſement.

**The Indorſement.**

IT is inrolled in the Court of our Lord the King, before the King himſelf at Weſtminſter, of the Term of —— in the —— Year of the Reign of our Sovereign Lord George the Second, now King of England, &c. Roll

Then put the Number of the Roll.

When it is acknowledged before a Judge, then the Judge's Clerk writes:

**The Caption before a Judge.**

ACknowledged the —— Day of —— in the —— Year of King George the Second, before me,

The Judge's Name.

And then the Entry is thus:

**The Form of the Inrollment when acknowledged before a Judge.**

England, to wit, BE it remembered, That (the firſt Day of the Term) in this ſame Term before our Lord the King at Weſtminſter, A. B. Knt. one of the Juſtices of our Lord the King, aſſigned to hold Pleas in the Court of our Lord the King before the King himſelf here, recordeth, That on the —— Day of —— laſt paſt, before the Juſtice himſelf, at his Chambers ſituate in Serjeants Inn in Chancery-lane, London, came C. D. of E. in the County of S. Gent. in his own proper Perſon, and brought before the ſaid Juſtice then there his certain Indenture, which he acknowledged to be his Deed, and prayed, that the ſaid Indenture as his Deed, in the Court of our Lord the King before our ſaid Lord the King at Weſtminſter, might be inrolled on Record, and which ſaid Indenture, the aforeſaid Juſtice by his own proper Hands hath delivered here into Court to be inrolled; and it is inrolled in this Form which follows, to wit, This Indenture, &c.

The Indorſement muſt be as before.

In this Method muſt theſe Deeds be inrolled in all other Courts.

A Bargain and Sale for Money paſſes a Fee without the Word *Heirs* at Common Law.

A Bargain and Sale of Lands, at Common Law, for Money paſſes a Fee without the Word Heirs. 27 H. 8. 5. b. Carter 209.

Eſtovers and Things *de novo*, cannot be granted by Bargain and Sale.

Eſtovers and ſuch like Things de novo, that have not Eſſence before, are not grantable by Way of Bargain and Sale. Con-

# Conditions and Limitations.

What the Nature of a Condition is.

**THE Nature of a Condition is to bind the Eſtate, and to run along with it, in whoſeſoever Hands the Lands come;** (a) Eſt modus donationis, & cujus eſt dare, ejus eſt diſponere. *Lit. Rep.* 128. **and ſhall bind Infants.** 1 Mod. Rep. 110.

What a Condition doth, and what a Limitation.

(a) And alſo to draw back the Eſtate to the Feoffor, Donor, or Leſſor: But a Limitation carries the Eſtate further. 1 *Leon. Caſe* 409. *Moor, fo.* 292.

Where an Eſtate deviſed upon Condition ſhall be conſtrued as a Limitation, and why.

Where an Eſtate is deviſed to the Heir at Law, upon Condition that he pay ſo much Money to *J. S.* this ſhall not be conſtrued to be a Condition, but a Limitation; for if it ſhould be conſtrued to be a Condition, none but the Heir at Law can enter for the Condition broken: But it ſhall be conſtrued to be a Limitation, and then upon Non-payment of the Money, the Eſtate deviſed to him ſhall ceaſe and come to *J. S.* *Cro. Eliz.* 204, 205. *pl.* 39. *Owen* 112. 2 *Mod.* 7. 1 *Lut.* 809. 3 *Mod.* 32. But if it be, *And in Default thereof Remainder over*; here, the Remainder Man ſhall upon Breach have the Eſtate by executory Deviſe. *Mod. Caſes* 241. 3 *Co.* 21. *a. Cr. Eliz.* 833.

Where a Condition, and where a Limitation.

In all Caſes where after a Condition an Intereſt is limited to a Stranger, it is not a Condition but a Limitation. 1 *Leon. Caſe* 362. *Cro. Eliz.* 205. *pl.* 39. 1 *Brownl.* 65. 1 *Roll. Abr.* 412. 1 *Vent.* 200.

Conditions are always taken ſtrictly, and ought to be truly performed.

**Conditions are always taken ſtrictly,** Latch 28. **and there ought to be a ſtrict Performance of the Thing, or elſe in ſo beneficial a Manner as will ſerve the Turn,** Lit. Rep. 128. **and ought to be truly and effectually performed.** Litt. Rep. 135.

It cannot be reſerved but on the Part of the Feoffor, Donor, or Leſſor.

**A Condition cannot be reſerved but on the Part of the Feoffor, Donor, or Leſſor.** Dyer 6. a. b. pl. 2. Litt. Sect. 347. Co. Litt. 214.

How to be conſtrued when created in a Deed.

When a Condition is created in a Deed, the Law ſays, That it ſhall be taken favourably for him who is to perform it. 4 Leon. Caſe 161. See much good Matter there.

There are four Incidents that a Condition to create an Eſtate ought to have.

The four Incidents which a Condition to create an Eſtate ought to have.

1ſt, It ought to have a particular Eſtate, as a Foundation whereupon the Increaſe of the greater Eſtate ſhall be built.

2dly, That ſuch particular Eſtate ſhall continue in the Leſſee or Grantee until the Increaſe.

3dly, This muſt be at the Time when the Contingency happens, or elſe it ſhall never veſt.

4thly, The particular Eſtate and the Increaſe muſt take Effect by the ſame Deed, or by ſeveral Deeds delivered at the ſame Time. 8 Rep. 75. a.

Eſtates upon Condition are of Conditions in Deed and Conditions in Law.

Eſtates upon Condition are of two Sorts; Conditions in Deed, and Conditions in Law.

What is a Condition in Deed.

Conditions in Deed are where a Man infeoffs another, reſerving a yearly Rent to him and his Heirs, payable at one or more Feaſts, on Condition that if the Rent be behind, it ſhall be lawful for the Feoffor and his Heirs to enter; (a) in Caſe the Rent is not paid according to the Condition, the Feoffor and his Heirs may enter and ouſt the Feoffee; for the Eſtate becomes defeaſible if the Condition is not performed. Co. Litt. 201. a. b. Litt. ſect. 325. Co. Litt. 233. 1 Roll. Abr. 412. So alſo it is if Lands are given in Tail, or let for Life or Years. Litt. ſect. 326.

If Rent be behind, the Feoffor cannot enter without a Demand.

(a) Though the Rent is behind, the Feoffor cannot enter without a Demand, *Dyer* 222. 1 *Sid.* 7. *Dyer* 28. *a.* * which Demand muſt be made upon the Land, becauſe the Land is Debtor, and that is the Place appointed by Law. *Co. Litt.* 201.

* Which Demand muſt be made by the Party or ſome other Perſon authoriſed by him; a Bailiff of his own Head cannot do it. *Hob.* 254. *Mo.* 52. *Dyer* 222.

Alſo where a Penalty or Re-entry is joined to the Thing, you cannot enter without a Demand. *Hob.* 207.

Where the Demand to be made.

If there is a Houſe upon the Land, the Demand is to be made at the Houſe, and at the Fore-door, becauſe it muſt be at the moſt notorious Place; and it is not material whether any Perſon is there or no. *Co. Litt.* 201. *b.* 2 *Rep.* 32.

And although the Feoffee be in the Hall, yet the Feoffor need not to come, but only to the Fore-door, that being the

Place appointed by Law, though the Door be open. *Co. Litt.* 201. *b.*

A Feoffment is made of a Wood or a Cloſe only, the Demand muſt be made at the Gate being the moſt notorious Place. *Co. Litt.* 222. *a.*

Where to be when the Rent is made payable off from the Ground.

And if the Rent is reſerved to be paid at any Place off from the Land, yet it is in Law a Rent, and the Feoffor muſt demand it at the Place appointed, obſerving the moſt notorious Place. *Co. Litt.* 202. *a.*

Where it may be tendred at the Day.

But if the Feoffee comes to the Feoffor upon any Part of the Ground at the Day of Payment, and offers his Rent; although it is not the moſt notorious Place, nor at the laſt Inſtant, the Feoffor is bound to receive it.

Where it need not be demanded.

Where Rent is reſerved payable off from the Land, and a Re-entry for Non-payment, the Leſſee is bound to offer the Rent to the Leſſor at the Place appointed for Payment; becauſe the Rent being there payable, the Plaintiff is not bound to demand it. *Kidwelly* and *Brand*, *Plowd. Com.* 170. *b.* contrary to *Cro. Eliz.* 415, 435, 536. *Moor* 408, 598. S. C. and 4 *Co.* 73. But I think it is the ſafeſt Way to demand it.

When he in Reverſion muſt demand it, and the Leſſee ought to tender it.

There is a Diverſity, when he in Reverſion muſt demand the Rent, and when the Leſſee ought to tender it: For if a Man leaſes for Years or Life, rendring Rent at ſuch a Feaſt, and if it be Arrear he may enter; there the Leſſor ought to come upon the Land, and demand the Rent; for the Land is the Debtor, and the Leſſee's Perſon is not, but in reſpect of the Land: But when the Rent is payable off from the Land, then the Leſſor is not bound to demand the Rent, becauſe his Debtor, (*viz.*) the Land, is abſent; and although the Leſſee is preſent, it is not material; for he is not the original Debtor, neither hath the Leſſor any Intereſt to demand the Rent of him, but the Leſſee ought to offer it, for his own Indempnity. *Plowd. Com.* 70. *b.* 71. *a.*

The Leſſor need not demand it where payable off from the Land.

When payable at a certain Feaſt or ten Days after.

In Caſe the Rent is payable at a certain Feaſt or ten Days afterwards, the Feoffor need not to demand it upon the Feaſt-day, but he muſt upon the tenth Day demand it, ſo long before it grows dark as he can tell the Money, ſo as to diſtinguiſh good from bad; and he muſt uſe theſe Words, (*viz.*) *I do here demand* 5 *l.* (or whatever the Sum is,) *for Rent due for this Land at* Michaelmas *laſt*, (or any other Feaſt, as the ſame is payable) *and yet unpaid.* And he muſt have a Witneſs with him to take Notice thereof; and the beſt Way is to take it down in Writing, and let the Witneſs ſet his Hand to it. See *Co. Litt.* 202. *a.*

How and in what Words to make the Demand.

What muſt be done after the Demand.

*Note*; After this Demand, if the Rent is not paid, the Feoffor muſt afterwards enter; * for the Non-payment of the Rent doth not deveſt the Eſtate, but the Entry. *Litt. ſect.* 351. But

in

* How to make the Entry, ſee in Title *Entry*.

in this Caſe Equity will help the Feoffee; tho' if there is an Entry made, there muſt be a new Conveyance made, becauſe the firſt Eſtate is abſolutely defeated by the Entry.

How it is where the Clauſe is, *That if the Rent be behind, the Feoffor ſhall hold the Land till ſatisfied.*

**But if the Feoffment is made of Lands reſerving a Rent, and if the Rent be behind, That it ſhall be lawful for the Feoffor to enter and hold the Land until he is ſatisfied.** (a) **In this Caſe if the Feoffor enters, the Feoffee is not excluded, but the Feoffor ſhall hold the Land, and take the Profits until he is ſatisfied; and then the Feoffee may enter and hold it, as he held it before.** Litt. ſect. 327.

After Satisfaction the Feoffee may re-enter.

What Remedy when the Rent is arrear.

(a) A remedial incertain Intereſt paſſes to the Feoffor and his Heirs, dependant on the Rent; and the Rent being in Arrear, and demanded,* the Feoffor may enter and make a Leaſe, (though he hath but an incertain Intereſt) to try the Title, and it may be for any Number of Years uſual in Ejectment-Leaſes. *Jemot* and *Cooly*, 1 *Sid*. 223, 224. So if a Rent is granted to *A.* with a Proviſo, in Caſe it be in Arrear, to enter and hold the Land till the Arrears be ſatisfied out of the Profits thereof; if the Rent be in Arrear, *A.* may recover the Poſſeſſion in Ejectment, for this Proviſo creates an Intereſt in the Land to anſwer the Rent. *Cr. Jac.* 511. 1 *Lev*. 170. 1 *Sid*. 223, 262, 344. 1 *Saund*. 112. *Raym*. 135.

* But not without a Demand.

When Profits ſhall be accounted Part of Satisfaction, and when not, on Condition of Re-entry.

If a Man make a Leaſe for Years, reſerving Rent, with a Condition that if the Rent be behind, the Leſſor ſhall re-enter on the Land, and take the Profits until *thereof* he be ſatisfied; there the Profits ſhall be counted as Parcel of the Satisfaction: But if the Condition be that the Feoffor ſhall take the Profits until he be paid the Rent, without ſaying *thereof*, there the Profits ſhall be accounted no Part of the Satisfaction, but ſhall be only to haſten the Leſſee to pay it; and until he is ſatisfied, he ſhall take the Profits to his own Uſe. *Co. Litt.* 203. *a. Litt. ſect.* 327.

There are diverſe Words which make Eſtates upon Condition.

**There are diverſe Words which make Eſtates upon Condition,** (b) **as upon Condition that he pay.** (c) Litt. ſect. 329. **So that he pay.** Ibid. **That if it happen the Rent to be behind,** &c. **that then it ſhall be lawful for the Feoffor, and his Heirs to enter.** (d) ſect. 330. **Alſo** ſub Conditione, ita quod, Proviſo. 10 Rep. 34. a.

Where Words of a Condition amount to a Limitation.

(b) Expreſs Words of a Condition may by Conſtruction in a Will amount to no more than a Limitation. 1 *Mod. Rep*. 86. 2 *Lev*. 21, 22. 1 *Vent*. 199. *Raym*. 236.

Provided always, &c. that the Leſſee ſhall not alien;

Both a Condition and Covenant.

(c) Provided always, and it is covenanted and agreed between the ſaid Parties, that the Leſſee ſhall not alien; this was held a Condition by Force of the Proviſo, and a Covenant by Force of the other Words. *Co. Litt.* 203. *b.* 1 *Roll. Abr.* 408. That the Leſſor may take it as a Covenant or Condition, but not as both. *Dal.* 8.

If it ſhall happen, is no Condition without Words of Entry.

(d) The Words, *If it ſhall happen*, make no Condition, without the Words, *That it ſhall be lawful for the Feoffor and his Heirs to enter.* Litt. ſect. 331.

The Word *Si*, a precedent Condition. Where *Pro* makes a Condition precedent, and where ſubſequent.

The Word Si is a precedent Condition. Litt. Rep. 219, 220. Where the Word Pro makes a Condition precedent, and where ſubſequent. Hob. 41. Poph. 98.

The ſeveral Words of a Condition.

Such preciſe Words are not required in the Caſe of a Leaſe for Years as of a Freehold.

If a Man makes a Feoffment in Fee, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propoſitum, that the Feoffor ſhould do or not do ſuch an Act, theſe are not Words of a Condition, (a) unleſs in the Caſe of the King, or in Caſe of a Will. 10 Rep. 24. a. Co. Litt. 204. 1 Roll. Abr. 407. 10 Co. 42. Hob. 231. 4 Leon. 70.

(a) But ſuch preciſe Words are not required in Caſe of a Leaſe for Years, as of a Freehold; for if a Man make a Leaſe for Years, wherein there is a Clauſe, That the Leſſee ſhall continually dwell upon the Land upon Pain of Forfeiture; theſe Words amount to a Condition. *Co. Litt.* 204. *a.* 1 *Roll. Abr.* 409. *Goldſ.* 99. 1 *Roll. Rep.* 68, 69. 2 *Bulſt.* 290. *Cr. Eliz.* 202.

So alſo where the Words are, *quod non licebit* to the Leſſee *dare, vendere vel concedere ſtatum ſub pœna foriſfactura.* Co. Litt. 204. a. 1 Roll. Abr. 408. 1 Leon. 246.

There is a Difference between a Gift of Lands and a Gift of an Annuity, or ſuch like; as where a Man grants an Annuity *pro una acra terræ*, this amounts to a Condition; and if the Grantee of the Acre is evicted, the Annuity ſhall ceaſe.

But if *A.* makes a Feoffment in Fee, or a Leaſe for Life, of an Acre of Land *pro Conſilio impenſo*, or *pro una acra terræ*, although Counſel be denied, or the Land evicted, yet *A.* ſhall not re-enter: Becauſe there ought to be legal Words of Condition or Qualification; for the Cauſe or Conſideration ſhall not avoid the Eſtate of the Feoffor; and the Reaſon is, for that the Eſtate in the Land is executed, and the Annuity executory. *Co. Litt.* 204. *a.*

If a Condition annexed to Lands were poſſible at the making of the Condition, and after become impoſſible by the Act of God, the Eſtate of the Feoffee which paſſed by the Livery ſhall not be avoided; as for Inſtance, Where there is a Feoffment in Fee, upon Condition that the Feoffee ſhall within a Year go to *Rome*; the Feoffee dies before the Year ended, yet the Eſtate of the Feoffee is become abſolute; for the Eſtate once veſted by the Livery ſhall not be deveſted without Default in the Feoffee. So alſo, if a Man is bound by

Bond or Recognizance to appear at ſuch a Day, and he dies before the Time, the Bond or Recognizance is ſaved, *Co. Litt.* 206. *a.* and *Roll. Abr.* 449. by the Act of God. And by *North*, Chief Juſtice, it is a known Rule, That all Conditions of Bonds, where there is a Penalty, are made in Favour and for the Benefit of the Obligor. 2 *Mod.* 204.

Tenant in Mortgage, what.

If a Man makes a Feoffment, Gift in Tail, Leaſe for Life or Years, upon Condition, That if the Feoffor pay to the Feoffee, &c. ſuch a Day ſo much Money, that then the Feoffor may re-enter; in this Caſe the Feoffee, &c. is called Tenant in Mortgage. Litt. ſect. 332, 333.

How it is where the Tender is made, and the Feoffee refuſeth to receive it.

Where a Mortgage is made upon Condition, That the Feoffor ſhall pay the Feoffee ſo much Money ſuch a Day, and the Feoffor dies before the Day, yet if the Heir of the Feoffor tenders (a) the Money, and the Feoffee refuſes to receive it; there the Heir of the Feoffor may enter, and the Feoffee hath no Remedy by the Common Law to have his Money, becauſe it was his own Folly to refuſe it. (b) Litt. ſect. 335, 338. Co. Litt. 208. b. 209. a.

How Tender of Money may be made.

(a) Tender of Money may be made in Purſes or Bags without ſhewing or telling thereof; for it is the Part of the Receiver to put it out and tell it. *Co. Litt.* 208. *a.* 5 *Rep.* 114. *Noy* 74.

How it is where Money is tendred upon a Bond.

(b) Where Money is payable upon a Condition of a Bond, and the Obligor tenders it at the Day, and the Obligee refuſes it; yet in an Action brought on the Bond, to which the Defendant pleads a Tender and Refuſal, he muſt plead *uncore priſt*, and bring the Money into Court: But if the Plaintiff will not receive it, but take Iſſue upon the Tender, and it is found againſt him, he hath loſt his Money for ever. *Co. Litt.* 207. *a.* *Dyer* 300. 2 *Cro.* 617. *Hob.* 198, 199. *Noy* 110.

How it is upon Tender on a ſingle Bond or Statute without Condition by Defeazance.

But where a Man makes a ſingle Bond, or acknowledges a Statute, which has no Condition, but a Defeazance for the Payment of a leſſer Sum at a Day certain; if the leſſer Sum is tendred at the Day and not accepted, he ſhall never have any Remedy to recover it. *Co. Litt.* 207. *a.* So likewiſe in Caſe of an Award.

Difference between a Condition and Defeazance.

The Difference between a common Condition and a *Defeazance* is, That the Condition is annex'd to or inſerted in the Deed; and a Defeazance is generally a Deed by it ſelf, concluded and agreed upon between the Parties, and having Relation to another Deed: And therefore, if a Man acknowledge a Statute, and enter into a Defeazance, that if his Lands in the County of *D.* ſhould be extended, the Statute ſhould be void; the Defeazance will be good and not repugnant; becauſe it is in another Deed: But the Condition of a Bond not to ſue the Obligation,

tion, is void for Repugnancy, being in the ſame Deed. *Moor* 1035.

What Eſtates, *&c.* ſubject to Defeazance by Deed.

Eſtates of Inheritance in Fee, or for Life, executed by Livery, cannot be ſubject to Defeazance afterwards, but at the Time of making the Feoffment, *&c.* It is otherwiſe of Leaſes for Years, Rents, Annuities, Covenants, Conditions, Obligations, Recognizances, Statutes, *&c.* for theſe may be defeated by Defeazance after the Things granted, or the Deeds made. *Co. Litt.* 236. 1 *Rep.* 113. *Plowd.* 137. 10 *Co.* 71. 2 *Sand.* 48. *Cr. Eliz.* 623. 1 *Roll. Abr.* 590.

A Feoffment upon Condition that the Feoffor ſhall have the Land upon Payment of Money.

If he pay not at the Day.

Who may tender the Money.

How it is if it be refuſed.

A Feoffment in Fee is made upon Condition, That if the Feoffee pay to the Feoffor ſuch a Day 20 l. that then the Feoffee ſhall have the Land to him and his Heirs: But if he pays it not at the Day, then the Feoffor or his Heirs; (a) and before the Day the Feoffee ſells the Land; either the Feoffee or his Feoffee may tender the Money at the Day; (b) and if it be refuſed, the Eſtate is become abſolute. Litt. Sect. 339.

Where the Condition is, That if the Feoffor pay to the Feoffee, and Feoffor dies before Payment, the Heir cannot tender afterwards.

Where no Time is limited in the Condition of a Bond for Payment of Money.

Where a Feoffment is made upon Condition, That if the Feoffor pay to the Feoffee ſuch a Sum (c) it ſhall be lawful for the Feoffor and his Heirs to enter; if the Feoffor dies before Payment, the Eſtate is become abſolute; for there being no Time appointed for the Payment, the Party had Time during his Life, which died with him, (d) and his Heir cannot tender the Money afterwards: But if there had been a Day certain, then if the Party died before the Day, his Heir or Executor might tender it. Litt. ſect. 337.

The Executors ſhall have the Money upon a Mortgage in Fee, unleſs made payable to the Feoffor or his Heirs.

Where a Mortgage is made to a Man in Fee, and the Mortgagee before the Day of Payment dies, and after the Day the Mortgagee's Heir enters; yet the Executors ſhall have the Money, (e) unleſs it is made particularly payable to the Feoffee or to his Heirs. (a) Litt. ſect. 339.

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(a) If theſe Words, *And if he pay it not at the Day,* &c. had not been in, the Condition had been void, becauſe by the firſt Words the Feoffee had a Fee. *Co. Litt.* 207. *b.*

(b) Becauſe he comes in by Privity of Eſtate. *Co. Litt.* 207. *b.* 336. 5 *Co.* 96. *b.*

(c) But there is no Time limited for the Payment.

(d) But where no Time is mentioned in the Condition of a Bond for Payment of Money, it is payable preſently. *Co. Litt.* 208. *a.*

(c) Hereby it appears, That the Executors do more repreſent the Teſtator than the Heir.

How it is, if made payable to the Feoffee, his Heir or Executors, &c. then he may pay it to either of them.

(a) But if it is made payable to him, his Heirs or Executors, the Mortgagor then hath Liberty to pay it to either of them. *Co. Litt.*

So if to the Feoffee, his Heirs or Aſſigns.

So if it be payable to the Feoffee, his Heirs or Aſſigns, and the Feoffee makes a Feoffment over; here the Feoffor may pay the Money to the firſt Feoffee, or to the ſecond Feoffee.

And ſo if the firſt Feoffee dies, the Feoffor may pay the Money either to the Heir of the firſt or to the ſecond Feoffee. *Co. Litt.* 210. *a.* 5 *Co.* 96. *Cr. Eliz.* 384. *Moor* 708. *pl.* 989. *Goulſ.* 177. *Poph.* 100. 3 *Leon.* 103.

Where no Place is appointed, the Tender muſt be to the Perſon.

If no Place is appointed for the Payment of the Money, the Tender is not to be made upon the Land, (b) but to the Perſon of the Feoffee, whereſoever he is. (c) But if the Condition of a Bond or Feoffment is to deliver twenty Quarters of Barley, &c. the Obligor muſt go before the Day to the Obligee, and know of him where he will receive it, and there it muſt be delivered to him. Co. Litt. 210. b. and Sect. 340. 78. 3 Leon. 260.

As a Sum in groſs.

(b) This is a Sum in Groſs. *Sect.* 341.

How it is where the Condition is for the Delivery of Corn or other Things.

(c) Otherwiſe it is of a Rent. *Co. Litt.* 210. *b.* *Litt. ſect.* 341. 21 *Ed.* 4. 6. 20 *Ed.* 4. 18. *b.*

An Horſe or other Thing may be paid in Satisfaction of the Mortgage-Money, if the Party will accept it ſo.

Alſo in the Caſe of a Mortgage, if the Feoffor pay a Horſe, or other Thing, in Satisfaction of the Money, and the other receives it, it is good enough. (d) Litt. ſect. 344.

A Diverſity where the Condition is for Payment of Money or Delivery of an Horſe.

(d) There is a Diverſity when the Condition is for Payment of Money, or for Delivery of a Horſe or any other Thing; for where it is for Payment of Money, and the Feoffee or Obligee accepts an Horſe in Satisfaction, it is good. *Dyer* 56. But if it was for Delivery of an Horſe, or other collateral Thing, it is no Performance of the Condition without the actual Delivery of the Horſe or other Thing. *Co. Litt.* 212. *b.*

So alſo if the Money is to be paid to a Stranger, Acceptance of a Horſe by him is no Performance of the Condition. *Co. Litt.* 212. *Litt. Rep.* 131.

No Entry or Re-entry can be reſerved or given, but only to the Donor, Feoffor and Leſſor, or their Heirs.

No Entry or Re-entry can be reſerved or given to any Perſon, but only to the Feoffor, Donor, or Leſſor, or their Heirs. (e) Litt. Rep. 347. Litt. ſect. 347. Co. Litt. 214. Vide Fry *and* Porter *in* Mod. Rep.

Difference between a Condition which requires a Re-entry, and a Limitation which determines the Eſtate.

(e) But there is a Difference between a Condition which requires a Re-entry, and a Limitation which determines the Eſtate without Entry.

Of a Condition no Stranger ſhall take Advantage, otherwiſe of a Limitation.

Of this firſt no Stranger ſhall take Advantage, but of a Limitation it is otherwiſe; for if a Man makes a Leaſe to a Woman *durante viduitate*, or a Leaſe to a Man for 100 Years, if the Leſſee ſo long live, and the Leſſor grants over the Reverſion, the Leſſee dies, the Grantee here may enter, becauſe the Eſtate by expreſs Limitation was determined. *Co. Lit.* 214. *b.*

Diverſity between a Condition annexed to a Leaſe for Years, and a Condition annexed to a Freehold.

Another Diverſity is between a Condition annexed to a Freehold, and a Condition annexed to a Leaſe for Years.

A Freehold cannot ceaſe without Entry.

A Leaſe for Years may.

A Stranger may take the Benefit of a void, not of a voidable Eſtate, by Entry.

For if a Man makes a Gift in Tail, or Leaſe for Life, upon Condition, that if the Donee or Leſſee goeth not to *Rome* by ſuch a Day, the Leaſe ſhall ceaſe and be void; the Grantee of the Reverſion ſhall never take Advantage of this Condition, becauſe the Eſtate cannot ceaſe before an Entry: *Co. Litt.* 218. But if the Leaſe had been but for Years, there the Grantee ſhall take Advantage of it, becauſe the Leaſe for Years is by the Breach of the Condition without any Entry, *ipſo facto* void. For a Leaſe for Years may begin without Ceremony, and end without it; but a Freehold cannot begin without Livery. And of a void Thing a Stranger may take Benefit, but not of a voidable Eſtate, by Entry. *Co. Litt.* 214. *b.*

A Leaſe for Years ſhall not be void for Non-payment of Rent, without an actual Demand.

Where Acceptance of the Rent ſhall make a Leaſe have Continuance, and where not.

Where the Condition of a Leaſe for Years is, That the Leaſe ſhall ceaſe and be void; * there no Acceptance of the Rent afterwards can make it to have Continuance; otherwiſe it is of an Eſtate or Leaſe voidable by Entry.

Diverſity, where it is that the Leaſe ſhall be void, and where it is that the Leſſor ſhall re-enter.

So another Diverſity there is, where the Condition is, that the Leaſe ſhall be void; and where it is that the Leſſor ſhall re-enter; for there the Grantee of the Reverſion ſhall never take Advantage of the Condition. *Co. Litt.* 215. *a.* This is as the Law was before the Statute of 32 *H.* 8. *c.* 34. But now,

32 H. 8. *cap.* 34.

What Remedies Grantees and Aſſignees ſhall have againſt Leſſees, &c. by the Statute of 32 *H.* 8. *cap.* 34.

**By the Act of** 32 H. 8. cap. 34. **it is provided, That every Perſon, Grantee or Aſſignee, to or by any other Perſon, ſhall have the like Advantage againſt the Leſſee,** &c. **by Entry for Non-payment of Rent or other Forfeiture, as the Grantor might have had.** Co. Litt. 215. a.

The Expoſition upon it.

1. **This Statute ſpeaking of Leſſees doth not extend to Gifts in Tail.** Co. Litt. 215. Cr. Eliz. 863.

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* It ſhall not be void, without an actual Demand; ſo that it is in the Election of the Leſſor and his Heir, to continue or avoid ſuch Leaſe. *Houſon* and *Norcliffe*, *Hob.* 231. And alſo *Amphurſt* and *Palmer*, *ibid.* that the Rent is due without Demand: But the Forfeiture is neither by Entry, nor avoiding the Condition given to the Leſſor, or his Heirs, without a due Demand made. See alſo *Hob.* 207. *Roll.* 459. *Co. Lit.* 201. *b.* 202. *a.* 5 *Co.* 56. *Dyer* 51. *Hob.* 331. *Plowd.* 70. 7 *Co.* 56. *Vaugh.* 32. *Hutt.* 42, 114. 7 *Co.* 56. *b.*

2. Where it ſays, That Grantees or Aſſignees of the Reverſion may take Advantage of Conditions, the Aſſignee of Part of the Eſtate of the Reverſion may take Advantage of Conditions. Co. Lit. 215. a.

3. By Act in Law, a Condition may be apportioned: But not by the Act of the Party. Co. Litt. 215. 1 Nelſ. 227. Styles 316. And if a Feoffee grants the Reverſion of Part of the Land, upon a Leaſe for Years, on which a Rent upon Condition is reſerved, all the Condition is confounded and gone: Though if the Leſſee aſſign Part, the Condition remains; for he cannot diſcharge the Eſtate of the Condition. 2 Danv. Abr. 119.

4. If the Leſſor bargains and ſells the Reverſion by Deed inrolled, the Bargainee is not in the Per by the Bargainor, (a) and yet he is Aſſignee within the Statute: So if the Leſſor grants the Reverſion in Fee to the Uſe of A. and his Heirs, A. is an Aſſignee within this Statute. Co. Litt. 215. b.

(a) Becauſe only a Uſe, and not the Eſtate it ſelf, paſſes to the Bargainee.

5. If a Leſſor bargains and ſells the Reverſion by Deed inrolled, or makes a Feoffment in Fee, and the Leſſee re-enters, the Grantee or Feoffee ſhall not take Advantage of any Condition, without giving Notice to the Leſſee. Co. Litt. 215. b. 5 Rep. 113. b. 8 Rep. 92. *Secus* of a Covenant. Godb. 282. Cr. Jac. 476. Bridg. 130.

**Of what Forfeitures by Force of a Condition Aſſignees ſhall take Advantage.**

The Aſſignees ſhall not take Advantage of every Forfeiture by Force of a Condition, but of ſuch only as are incident to the Reverſion, and run with the Land, as Rent, Repairs, making of Fences, &c. but not for any Sum in Groſs, Delivery of Corn, Wood, &c. or other collateral Thing. Co. Litt. 215. a. And vide 5 Co. 18. Moor 159, 243, 876. Owen 41. 1 And. 82. Raym. 250. 1 Sand. 159.

**A Freehold cannot ceaſe without Entry or Claim.**

A Freehold of Inheritance cannot regularly ceaſe without Entry or Claim.

(b) Co. Litt. 218. a.

**How it is in Caſe of a Bargain and Sale inrolled upon Condition.**

(b) If a Man make a Deed of Bargain and Sale inrolled with a Proviſo, *&c.* That if the Bargainor pay, *&c.* that then the Eſtate ſhall ceaſe and be void; he payeth the Money, the Eſtate is not re-veſted till Entry. And ſo it is if a Bargain and Sale is made of a Reverſion, Remainder, *&c.* *Co. Litt.* 218. *a.* 2 *Rep.* 50. in *Cholmeley's* Caſe.

**If Entry may be in a Thing, it ſhall not veſt before Entry or Claim, or Act in Law.**

If Entry may be in a Thing, it ſhall not be in the Party before Entry; and if Entry cannot be, but Claim, then not before Claim; and if neither Entry nor Claim can be made, then it ſhall be in him by Act of Law without the Act of the Party. *Browning* and *Beſton*, *Plow. Com.* 133. *b.* *Co. Litt.* 218.

Where a Condition is broken, the Freehold is not in the Party 'till Entry.

Where the Feoffor may lawfully enter for the Condition broken, the Freehold is not in the Feoffor till Entry, Litt. ſect. 351. but in the Feoffee, and he hath the lawful Eſtate. Dyer 344. a. 4 Co. 24. a. Co. Cop. 82, 88.

In Caſe of Death, a Feoffment muſt be made; as near the Condition as may be.

Where the Condition is broken, and where not,

in Caſe of Death.

Where a Feoffment is made on Condition, That the Feoffee ſhall give the Lands to the Feoffor and his Wife, and the Heirs of their Bodies, Remainder to the right Heirs of the Feoffor; if the Feoffor dies before the Gift made, (a) he muſt make a Leaſe to the Wife for her Life, without Impeachment of Waſte, Remainder to the right Heirs of the Feoffor, which is as near as can be to the Intent of the Condition. Litt. ſect. 352. Co. Litt. 219.

(a) Here if the Feoffee dies before any Gift made, then is the Condition broken, becauſe he made it not within the Time preſcribed by the Law; but if it was made upon Condition, that he make the Gift before *Michaelmas*, if the Feoffee dies before *Michaelmas*, the Eſtate of the Heir of the Feoffee ſhall be abſolute, becauſe the Time appointed by both Parties is become impoſſible by the Act of God. See 2 *Mod. Rep.* 204. But *quære*, for by the expreſs Intent of the Feoffment the Feoffee is but an Inſtrument to re-convey the Land to the Feoffor. 1 *Bacon Abr.* 413.

Where the Feoffee hath diſabled himſelf to perform the Condition, the Feoffor may enter.

But where a Feoffment is made upon ſuch Condition, and the Feoffee infeoffs another, (b) and doth not perform the Condition, the Feoffor may enter; becauſe the Feoffee hath diſabled himſelf to perform the Condition. Litt. ſect. 355. 222. *Poph.* 110. 1 *Co.* 25. *a.*

(b) Or makes a Leaſe for Years. *Sect.* 356. Or takes a Wife who is dowable. *Sect.* 357. Or charges the Land with a Rent, or acknowledges a Statute or Judgment. *Sect.* 358. *Co. Litt.* 1 *Roll. Abr.* 447. 5 *Co.* 21. *a.*

Where he diſables himſelf to perform.

No Condition ſhall bind which is not comprized in the Deed.

No Condition ſhall bind that which is not compriſed in the Deed. Litt. ſect. 359.

A Feoffment upon Condition that the Feoffee ſhall not alien, is void, and why.

A Feoffment upon Condition that the Feoffee ſhall not alien is void: (c) Becauſe the Law gives a Tenant in Fee Power to alien to whom he pleaſes. Litt. ſect. 360. Hob. 13. Co. Litt. 223. 10 Co. 38. b.

(c) The like Law of a Deviſe, Grant, or any other Conveyance of Lands. *Co. Litt.* 223. *a.* So it is in Caſe of a Leaſe for Years, or Gift of a Horſe, *&c.* *ibid.* And though

So alſo of a Deviſe, Grant or other Conveyance.

So in Caſe of a Gift of Horſe or Leaſe for Years, if the Word *Aſſigns* be not in.

though the Word *Aſſigns* be not in. *Hob.* 170. But if it be, that he ſhall not alien to *J. S.* that is good. *Sect.* 361. 2 *Leon.* 82. 3 *Leon.* 182. But where it is to any but his Kindred without the Leſſor's Conſent, and the Leſſor grants over the Reverſion, and the Leſſee aliens without the Grantee's Conſent; the Queſtion was, Whether this is not ſuch a Condition as is within the 32 *H.* 8. *c.* 34. or a collateral Condition? *Raym.* 250. *Vide* Title *Aſſignment.*

But not to alien to *J. S.* is good.

A Condition is in a Leaſe not to alien without Conſent; he deviſes it by his Will, and held an Alienation: He ſhould have left it to his Executors. *Poph.* 106. *Cro. Eliz.* 330. *pl.* 6. 331. *pl.* 8. 60. *pl.* 2. 1 *Rol. Abr.* 429. *Cr. Eliz.* 815. S. C. *Dyer* 45. *b. Owen* 14. *Cr. Eliz.* 330. *Goulds.* 49, 184. *Poph.* 106. *Cr. Eliz.* 60. *Dyer* 45. 4 *Co.* 119. But otherwiſe in Covenant. *Styles* 483.

A Condition not to alien without Conſent; he deviſes it, and held an Alienation.

A Condition that Tenant in Tail or his Heirs ſhall not alien in Fee or Tail, is good, and why.

**But if a Condition is, That Tenant in Tail, or his Heirs, ſhall not alien in Fee, Fee-Tail, or for any other's Life but their own, this is good; ſuch Alienation being contrary to the Statute** de Donis. Litt. ſect. 362. 10 Co. 39. Co. Litt. 223. Moor 39. pl. 126. 1 Vent. 322. Cr. Eliz. 35. 1 Leon. 292. **So where the Condition is, that the Feoffee ſhall not alien in Mortmain.** Co. Litt. 223. b. **But to Husband and Wife in ſpecial Tail, upon Condition that the Husband ſhall not levy a Fine to bar his Iſſue, is void.** Hob. 261. Co. Litt. 224. Vide Lucas Rep. 134. **where a Feoffment upon an unlawful Condition ſhall be good, but when the ſame Condition is in a Bond, it ſhall be void, and the Reaſon of the Difference.**

But to Baron and Feme in ſpecial Tail, upon Condition that the Baron ſhall not levy a Fine to bar his Iſſue, is void.

The ſeveral Incidents to Eſtates-Tail, not to be reſtrained by Condition.

**There are divers Incidents to Eſtates-Tail; as,**

1ſt, **To be diſpuniſhable of Waſte.**

2dly, **That the Donee's Wife ſhall be endowed.**

3dly, **That the Husband after Iſſue ſhall be Tenant by the Curteſy.**

4thly, **That Tenant in Tail may ſuffer a Recovery; and therefore a Gift in Tail with Condition to reſtrain any of theſe Incidents, is void.** Co. Litt. 224. a. Hob. 170. 6 Co. 41. 1 Co. 86. 9 Co. 128. b. Mo. 601, 633. 10 Co. 38. b. 1 Co. 14. a. 85. a. 1 Jones 58. Cr. Ja. 697. 1 Vent. 322. 1 Roll. Ab. 418.

What is prohibited by a Statute, may be prohibited by a Condition.

**Whatſoever is prohibited by any Statute may be prohibited by a Condition.** Co. Litt. 224. a.

He that will take the Benefit of a Condition, muſt perform it.

**Where a Leaſe for Life is made upon Condition, Remainder in Fee, Tenant for Life dies without Performance of the Condition, and he in Remainder enters: Although**

This is a conditional Limitation, and determines the Eſtate.

although he never ſealed the Indenture, yet he muſt perform the Condition, becauſe he takes it with that Charge upon it. (a) Litt. ſect. 374.

(a) A Condition runs always with the Eſtate, and binds in whatſoever Hands it comes. *Litt. Rep.* 128.

What are Eſtates upon Condition in Law.

Eſtates upon Condition in Law are ſuch as have a Condition by Law annexed to them, although not ſpecified in Writing; as a Grant of an Office for Life; the Law annexes a Condition to it, (b) That he ſhall well and duly execute his Office, otherwiſe the Grantor may ouſt him. (c) Litt. ſect. 378. Co. Litt. 223. a.

That Tenant for Life ſhall not alien or commit a Forfeiture.

(b) So in a Grant to Tenant for Life, the Law annexes a Condition to it, that he ſhall not alien or commit a Forfeiture.

Where a Man may be diſcharged from an Office, and where not.

(c) There is a Diverſity between Offices that have no other Profits but an annual Sum; as a Man's Bailiff, *&c.* there he may diſcharge him from the Office, but he muſt pay him his Fee; for no Man can derogate from his own Grant. *Co. Litt.* 233. *a. b.*

But where the Grantee hath Profits beſides his Fee, there he cannot diſcharge him. *Ibid.*

What is a precedent Condition.

A Precedent Condition, is where the Thing doth not take Effect until the Condition be performed, (d) Litt. Rep. 219.

(d) A Covenant to enjoy paying the Rent; and it was held, that (paying) was not a precedent Condition. 1 *Sid.* 280.

*In conſideratione præmiſſorum.*

Where a Covenant was *in conſideratione præmiſſorum* he would pay, *&c.* whether this be a Condition precedent or no? 1 *Mod. Rep.* 64. 2 *Saund.* 156, 157.

A Deviſe to a Grand-daughter in Tail, upon Condition that ſhe marry with Conſent of the Wife and *C.* and *D.* or the major Part of them.

That if ſhe marry without Conſent, or die without Iſſue, then to *E. F.* (not his Heir at Law.)

A. ſeized in Fee, deviſes to his Wife for Life, and after her Deceaſe to his Grandchild B. and the Heirs of her Body: Provided always and upon Condition, that ſhe marry with the Conſent of my ſaid Wife, and C. and D. or the major Part of them; and in Caſe ſhe marry without ſuch Conſent, or happen to die without Iſſue, then to E. F. (a) who is not his Heir at Law.

She marries without the Conſent of the Truſtees.

B. marries without the Conſent of the Truſtees, it goes over to E. F. 1 Mod. Rep. 300. 2 Lev. 21, 22. Raym. 236. 1 Mod. 86. Dyer 316. 1 Leon. 183. 10 Co. 41. a. 1 Vent. 203.

(a) A deviſe to a Son and Heir, and if he did not pay all Legacies, that then it ſhould remain to the Legatees; which were a younger Son and Daughter. In Default of Payment, this ſhall veſt in the Legatees by executory Deviſe. *Vaugh.* 272. 1 *Brook* 234. *Dyer* 33.

This is a conditional Limitation, and determines the Eſtate.

Hale. This is a good conditional Limitation, viz. a Condition to determine the Eſtate, and a Limitation (a) to let in the Defendant.

Had it been a Condition, the Eſtate had gone to the Heir at Law, which the Plaintiff was not.

(a) If this had been adjudged a Condition, then the Eſtate had gone to the Heir at Law, which the Plaintiff was not; for no Perſon can take Advantage of, or enter for a Condition broken, but the Heir at Law. 1 *Ventr.* 199, 200, 202, 203. I muſt be taken to be a Limitation, to ſupport the Intent of the Deviſor, and to let in the Remainder which he limits over. *Ibid.*

The Condition is collateral, to the Land, and ſhe is not bound from Marriage.

1ſt, It is a collateral Condition to the Land, and not againſt the Nature of the Eſtate; (b) and ſhe is not hereby bound from Marriage. Mod. Rep. 308.

Such a Condition is void in the Eccleſiaſtical Court.

(b) By the Eccleſiaſtical Law, regularly ſuch Condition is void; and therefore if the Queſtion were of a Legacy of Money, there might be a great deal of Reaſon to queſtion the Validity of it; becauſe in thoſe Courts wherein Legacies are handled, it would have been void: *Godol. Orph. Leg.* 45. *Swinb.* 266. 1 *Vern.* 20. 1 *Mod.* 30. *Swinb.* 265. But this being in Caſe of Land, is a good Condition, and not to be avoided in it ſelf. 1 *Mod. Rep.* 308.

But good at the Common Law in the Caſe of Lands.

It is a good Condition and Limitation, and there being a wilful Breach, there ought to be no Relief.

2dly, It being a good Condition and Limitation over, and there being a wilful Breach, there ought to be no Relief neither in Law or Equity. Mod. Rep. 308.

It is to contain the Party in due Obedience.

1. It is a Condition to contain the Party in due Obedience, which Law and Nature require. Mod. Rep. 309.

It is a voluntary Settlement.

2. It is a voluntary Settlement to the Grand-daughter in Tail, and the Remainder over is ſo too, and both Parties in æquali gradu to the Deviſor; therefore it would be hard to take the Eſtate from him, into whoſe Scale the Law hath thrown the Advantage. 1 Mod. Rep. 309.

Lands deviſed to pay Legacies and moſt are paid, here may be Relief.

If Lands are deviſed on Condition to pay Legacies, and the Deviſee hath paid almoſt all, and fails in one or two or ſo, there may be in this Caſe good Cauſe of Relief; becauſe he has paid ſo much and is ſomewhat in the Nature of a Purchaſer.

This is not a Legacy, but a Deviſe upon the Statute.

This is not a Legacy, but a Deviſe upon the Statute of Wills, (a) where a Man may deviſe at his Will and Pleaſure, viz. abſolutely or upon Condition, upon Limitation, or any Way that the Law warrants. 1 Mod. Rep. 312.

(a) The Difference between the Deviſe of a Legacy out of Land, and a Deviſe of the Land itſelf.

A Conſent to a Thing which is paſt ſignifies nothing.

A Conſent relating to a Condition, to a Thing that is paſt, ſignifies nothing; for a Conſent cannot be had for Things which cannot be otherwiſe: A Man cannot be ſaid to conſent to his Stature, or the Colour of his Hair. A Man may know of what Opinion he is or was; but 'tis impoſſible to know of what Opinion he would have been in the Circumſtances of Actions. 1 Mod. Rep. 312.

What are Words of Limitation.

The Words quamdiu, dum, and dummodo, are Words of Limitation; and if a Leaſe (a) is made to a Woman dum ſola fuerit, or dum caſta vixerit, or dummodo ſolverit ſuch a Sum, &c. if there is no Performance according to the Limitation, it determines the Leaſe; but it is otherwiſe, where a Rent is reſerved on a Condition. Vaugh. 32. Co. Litt. 236. b.

(a) Or other Eſtate.

Infants are bound at Law by Conditions.

Infants are bound by all Conditions at the Common Law, which require Skill and Confidence. (b) Hardreſs Rep. 11. 1 Vent. 200. Co. Litt. 233. b. 8 Co. 44. Cr. Car. 556. Carth. 42.

(b) The King ſhall be bound by an expreſs Condition, where he claims under a conditional Eſtate. *Hardreſs's Rep.* 14.

How a Proviſo in a Deed ought to be expounded.

A Proviſo in a Deed ought always to be expounded according to the Purport thereof, becauſe it is placed in Deeds ſometimes for a Condition, Co. Litt. 204. a. Nel. Abr. 3 Vol. 21. pl. 1, 2, 3. (c) ſometimes for an Exception, (d) and ſometimes (e) for a Limitation in a Leaſe; Co. Litt. 204. a. as where the Queen granted a Leaſe in Reverſion: Proviſo, that the Leaſe ſhall ceaſe, if the Rent or any Part thereof were in Arrear at ſuch a Feaſt, or a certain Day after. Poph. 27. and 25. Carter 2. 2 Leon. 128. 3 Leon. 225, 226. Dyer 222. 4 Leon. 70. Poph. 119. Moor 707. Gouldſ. 131. 2 Co. 72. a. 1 And. 71, 72. Cr. Eliz. 73. 2 Co. 27. b.

How a Proviſo ſhall be expounded.

(c) As where the Proviſo is, That the Leſſee ſhall not alien, *&c. Poph.* 27.

(d) As where it is that the Leaſe ſhall not extend to ſuch a Thing. *Ibid.*

(e) For a Covenant, 1 *Roll. Abr.* 408. *Dalſ.* 8. and ſometimes for a Declaration. *Carter* 3.

How in a Will.

In a Will, if there be a Condition, and after that a Limitation, the Condition muſt be limited accordingly. *Carter* 3. 2 *Rep.* 70. When the Word *Proviſo* makes an Eſtate or Intereſt conditional, three Things are to be obſerved:

1. That it ſtand originally of itſelf.
2. That it be the Word of the Feoffor, Bargainor or Donor.

3. That it is compulſory to make the Feoffee do the Act. 2 *Rep.* 70. *b.*

Liberty to cut down Trees and carry them away, repairing the Fences, this is not a Condition but a Covenant.

**A Leaſe is made of Lands excepting the Trees, and Liberty to eradicate, cut down, and carry them away, repairing the Fences and filling up of the Pits.**

**The Queſtion was, Whether this was a Condition, and that the Non-performance** (a) **had deſtroyed the Agreement and avoided the Liberty? And it was adjudged, That it was not a Condition but a Covenant, for which the Leſſee had his Remedy by Action.** (b) 1 Jones 205, 206. **And ſee** March 9. 2 Roll. Abr. 466.

A Releaſe of a Condition for an Hour, is a Releaſe for ever.

**If a Condition is releaſed for an Hour, it is releaſed for ever; for every Releaſe operates always by Way of Extinguiſhment.** Keilw. 88. a. 1 Inſt. 274. Litt. ſect. 467.

A Deviſe of Land, yielding and paying 20 *s. per Ann.* was ſaid to be a Condition.

**A Deviſe of Land** reddendo & ſolvendo proinde annuatim 20 s. **to J. S. this was held to be a Condition.** Cro. Eliz. 454. pl. 22. **See** 205. pl. 39. 2 Leon. 114. Cr. Ja. 592. 3 Co. 22. 2 Brownl. 68. Styles 294. 2 Sid. 152.

A Limitation upon a Poſſibility after a Poſſibility, is void.

**A Limitation of an Eſtate upon a Poſſibility after a Poſſibility is void.** (c) Cro. Car. 577. pl. 20.

Where the Deviſe is to the eldeſt Son upon Condition, this muſt be conſtrued a Limitation.

**Where the Deviſe is to the eldeſt Son upon Condition; the Word** Condition **there muſt ſignify a Limitation, becauſe as a Condition it would be void being to the eldeſt Son.** (d) **But if it is to a younger Son upon Condition, then the Law will conſtrue it to be a Condition.** (e) Carter 94. *at the Bottom.* Cro. Eliz. 205. pl. 39. Owen 112. 2 Mod. 7. 1. Lut.

Where the Word *Paying* is not a Condition, but a reciprocal Covenant for which each may have his Action.

(a) In not repairing of the Fences and filling of the Ditches.

(b) Per *Pemberton* Chief Juſtice, A Covenant that the Plaintiff ſhould enjoy paying the Rent reſerved: The Defendant pleads, that he had not paid the Rent according to the Reſervation; and upon a Demurrer it was adjudged, That the Word *Paying* did not make the Covenant conditional, but that it was reciprocal; for which the Party might have his Action. *Jones* 206. Sir *Charles Bickerſtaff*'s *Caſe*, in *C. B.* 1 *Sid.* 280. *pl.* 8. 4 *Leon.* 50. 2 *Mod.* 34, 35.

(c) As where a Man deviſes to Uſes; and if any of the Uſes and Truſts be not done, then he deviſes to the Heirs Males of his Body, upon Condition to perform the ſaid Truſts; and if they failed then to the City of *London*: This Deviſe to the City of *London* is void.

(d) *Frye*'s *Caſe* in 1 *Ventr.* and alſo in the 1 *Mod. Rep.* and *Carter* 171.

(e) The beſt Way is to limit it over, and for Default of Payment then to *C. D. &c. Carter* 170.

809. 3 Mod. 32. 1 Vent. 200. 1 Mod. 86. Brownl. 65. 1 Roll. Abr. 412. Co. Litt. 203. 2 Co. 70. 2 Sid. 152. 2 Brownl. 68. Goulſ. 134. 10 Co. 35.

The Eſtate ceaſes upon a Limitation without Entry or Claim.

Upon a Limitation the Eſtate ceaſes without Entry or Claim, ſo that by Breach or Non-performance, the Eſtate deviſed to the eldeſt Son upon Condition (which really is a Limitation) ceaſes, and it then veſts in the Deviſee over. Carter 171. 3 Rep. 21. a. 2 Mod. 7. Co. Litt. 236. b.

To the Uſe of *A.* and *B.* in Fee, till 1000 *l.* is raiſed, this is a Fee limited or conditional.

If Lands are conveyed to the Uſe of A. and B. and their Heirs (a) till 1000l. is raiſed; it is a Fee-ſimple limited or conditional. Carter 107.

But if to *A.* and B. (without *Heirs*) then perhaps but a Chattel.

(a) But if it is to *A.* and *B.* (without the Word *Heirs*) till ſuch a Sum be levied; perhaps in an Uſe, it may be but a Chattel. *Carter* 107.

What will make a Condition in the King's Grants.

In Grants made by the King, or by a Will, &c. ea intentione, or ad effectum, will make a Condition. 10 Co. Portington's Caſe, 24. a. 1 Roll. Abr. 407. Hob. 231. 4 Leon. 70.

Leſſee covenants not to aſſign upon Pain of Forfeiture, this is a Condition.

Leaſe by Indenture, and the Leſſee covenants not to aſſign, &c. upon Penalty of forfeiting his Term, this is a Condition. 1 Roll. Abr. 488. N° 2. 409. Co. Litt. 204. Godb. 99. 1 Leon. 246.

Where a Condition gives the Leſſor Entry by Implication.

If a Man makes a Leaſe for Life, or a Feoffment, upon Condition that if the Feoffee or Leſſee does ſuch an Act, the Eſtate ſhall be void: (b) Now, although the Eſtate cannot be void before Entry, yet this is a good Condition, and ſhall give an Entry to the Leſſor by Implication. 1 Roll. Abr. 408. Letter E. N°. 1. Litt. ſect. 723. So it ſhall be if the Condition is that the Eſtate ſhall ceaſe. Ibid. N°. 2.

(b) And it ſhould have been, That it ſhall be lawful for the Feoffor or his Heirs to enter.

A Deviſe to one of his two Daughters in Fee, to pay to his other Daughter 20 *l.* this is a Condition.

A Man having two Daughters, deviſes his Land to one of the Daughters, To have and to hold to her and her Heirs, to pay to her other Siſter a certain Sum of Money at a certain Day; and this was adjudged to make a Condition, and if the Money were not paid, the other Siſter might enter into a Moiety. 1 Roll. Abr. 410. Letter I. N°. 2. 411. Cr. Eliz. 833, 919. Moor 644. Noy 51. Owen 8. 2 Leon. 38. Cr. Ja. 56. 592. Carter 93. 1 Roll. Abr. 412. Cr. Eliz. 376. Goulſ. 152. Owen 112.

A Condition or Limitation to reſtrain a Man from doing what is incident to his Eſtate, is void. As to reſtrain Tenant in Tail from levying of a Fine, &c.

A Condition or Limitation to reſtrain a Man from doing that which is an Incident to his Eſtate, ſuch Condition, or Limitation, is void and repugnant; (c)

(c) For when a Man grants an Eſtate in Tail, he tacitly gives this Incident to it.

as Tenant in Tail cannot be reſtrained from levying a Fine, according to the Statute, to bar his Iſſue, or ſuffering of a Recovery. Vid. 10 Rep. 39. a. Co. Litt. 223.

But a Gift in Tail upon Condition not to alien in Fee, &c. is good.

But a Gift in Tail upon Condition that the Tenant in Tail ſhall not alien in Fee, Tail, or for Life of another, is good. (a) Litt. 361. and 10 Rep. 39. a. Co. Litt. 223. Moor 39. pl. 126. 1 Vent. 322. Cr. Eliz. 35. 1 Leon. 292.

(a) Becauſe when he makes ſuch Alienation he does contrary to the Intent of the Donor; and it makes a Diſcontinuance, which is againſt the Statute of *Weſt.* 2.

Becauſe ſuch Alienation is a Tort and a Diſcontinuance.

Where the Land was deviſed to the eldeſt Son, paying, &c. was adjudged a Limitation.

A Man ſeized of Lands in Fee made his Will, and thereby deviſed his Land to his younger Son H. when he ſhould accompliſh the Age of twenty-four Years, upon Condition that he ſhould pay 20l. to the Daughter of the Deviſor; and if he died before the Age of twenty-four that then R. his eldeſt Son ſhould have the Land, upon Condition that he ſhould pay the 20l. and if his ſaid Sons fail'd to pay the ſaid 20l. that the Land ſhould remain to his ſaid Daughter. The Deviſor died, and H. entred after his Age of twenty-four, and did not pay the 20l. R. the elder Son entred upon *him: But adjudged, That his Entry was not lawful, it being a Limitation, not a Condition, although the expreſs Words were ſo. (b) Goldſ. 153. 1 Roll. Abr. 411, 412. Cr. Eliz. 376. Owen 112.

* Suppoſing it to be a Condition.

(b) 1. *R.* (becauſe the eldeſt Son) was to have nothing unleſs *H.* died before his Age of twenty-four.

2. The Intent of the Deviſor appears, That his Daughter ſhould have the Land for Non-payment of the Money.

The Intent appears how it ſhall be.

Confir-

# Confirmation.

What a Confirmation is.

A Confirmation is a Conveyance of an Eſtate, or Right, in eſſe, whereby a voidable Eſtate is made ſure and unavoidable; (a) or whereby a particular Eſtate is increaſed. Co. Litt. 295. b.

No new Thing can be reſerv'd upon it.

(a) No new Rents or Services can be reſerv'd upon a Confirmation. 9 *Rep*. 142.

It may make a voidable or defeaſible Eſtate good, but it cannot work upon a void Eſtate.

A Deed of Confirmation may make a voidable or defeaſible Eſtate good, but it cannot work upon an Eſtate that is void in Law. (b) Co. Litt. 225. b.

It cannot make an Eſtate ſubject to a Condition, to be abſolute.

(b) A Confirmation cannot make any Eſtate that is ſubject to a Condition, to be abſolute; for a Confirmation cannot alter the Quality of the Eſtate, except only it be to enlarge it. 1 *Rep*. 146. *b*.

It binds the Right of him who makes it, but alters not the Eſtate of him to whom made.

A Confirmation ſhall bind the Right of him who makes it; but not alter the Nature of the Eſtate of him to whom it is made. (c) Poph. 51.

A Leaſe by a Parſon, confirmed by a ſucceeding Biſhop and Patron, and good.

(c) A Parſon leaſes his Rectory for ſixty Years; this was confirmed by the ſucceeding Biſhop, and ſucceeding Patron alſo; neither of them being Biſhop or Patron at the Time of the Granting of the Leaſe, and yet held to be good. *Cr. Car*. 38. *pl*. 3.

There are Confirmations expreſt, and Confirmations implied.

There are Confirmations expreſt, or in Deed, (d) and Confirmations implied, or in Law.

All actual Confirmations muſt be by Deed in Writing. 29 *Car*. 2. *c*. 3.

(d) Now all actual Confirmations muſt be by Deed in Writing, otherwiſe they are void, *by the Statute of Frauds and Perjuries*. 22 Car. 2. cap. 3.

Every Confirmation is either *perficiens*, *creſcens*, or *diminuens*.

Every Confirmation is either perficiens, creſcens, or diminuens. 9 Rep. 138. Vide 1 Rep. 111.

What is a Confirmation *perficiens*.

How it operates.

1ſt, A Confirmation perficiens is where a Feoffment is made upon a Condition, and the Feoffee makes a Feoffment over, and then the Feoffor confirms the Eſtate to him and his Heirs; this is confirmatio perficiens,

ciens, and makes no Tranſmutation of the Eſtate, but corroborates and perfects it, and makes it a Fee-Simple abſolute, which before was conditional (a). 9 Rep. 142. a.

Where a Feoffee ſhall hold without a Condition.

(a) Feoffee upon Condition, makes a Feoffment over abſolutely: The firſt Feoffor confirms his Eſtate, he ſhall hold it without any Condition, be the Confirmation made before or after the Condition broken. 1 *Rep.* 147. *b.*

A Rent is granted in Fee upon Condition; the Feoffor confirms, the Condition is broken, and the Feoffor enters, yet the Rent remains.

A Feoffee upon Condition grants a Rent in Fee; the Feoffor by another Deed confirms to him and his Heirs; afterwards the Condition is broken, and the Feoffor enters for the Breach, yet the Rent remains. *Ibid.*

What is a *Confirmatio creſcens.*

2d, Confirmatio creſcens is when this inlarges the Eſtate of him to whom the Confirmation is made; as to an Eſtate at Will, to increaſe it for Years; or to an Eſtate for Years, to increaſe it for Life, in Tail, or in Fee. 9 Rep. 142. a.

What is a *Confirmatio diminuens.*

3d, Confirmatio diminuens is when the Lord confirms the Eſtate of his Tenant, to hold for a leſſer Rent: but upon this he cannot reſerve a new Thing, or new Rents or Services. 2 Rep. 142. a. Litt. ſect. 538, 539.

Where a Confirmation inlarges an Eſtate, Privity is required.

Where a Confirmation ſhall inlarge an Eſtate, there Privity is required, as well as in the Caſe of a Releaſe. Co. Lit. 296. a.

Whatever I can defeat by my Entry, I can make good by my Confirmation.

It is a Rule in Law, that ſuch Things as I may defeat by my Entry, I may make good by my Confirmation. 1 Rep. 147. a. 11 H. 7. 28. b.

## *The Form of the Deed.*

The Form of the Deed of Confirmation.

KNow all Men by theſe Preſents, (b) that I A. B. of, &c. have granted, ratified and confirmed, and do by theſe Preſents grant, ratify and confirm, (c) unto C. D. of, &c. All the Eſtate which I have in one Meſſuage, with the Appurtenances in D. &c. To have and to hold unto him the ſaid C. D. and his Heirs for

It may be by Deed-Poll or Indenture.

Needs no Conſideration.

(b) This may be by Indenture as well as Deed-Poll, and is good without any Conſideration expreſs'd.

What Words.

(c) The Words *Dedi, conceſſi & confirmavi*, are as good, and work without Livery. *Litt. ſect.* 531. *Litt. Rep.* 270. *Co. Litt.* 301. 2 *Sand.* 96, 97.

*Volo*, a good Confirmation.

*Volo* that the Leſſee for Years ſhall have for his Life, adjudged a good Confirmation. *Litt. Rep.* 270.

for ever. (a) Litt. ſect. 515, 523.

The Word *Demiſe* may amount to it.

Alſo the Word *Demiſe* may amount unto a Confirmation. *Litt. Rep.* 270. *Plowd.* 187. *Dyer* 178.

*To have and to hold*, and for what Eſtate, neceſſary in it.

(a) It is a good and ſure Thing in every Confirmation to have theſe Words, *To have and to hold*, &c. in Fee, Fee-Tail, for Life or Years, as the Caſe requires. *Litt. ſect.* 523.

A Confirmation to Tenant for Life and his Heirs, how it muſt be to make a Fee.

The *Habendum* makes a Fee.

Diverſity between *Habendum* the Eſtate and *Habendum* the Land.

And where a Man lets Land to another for Life, and afterwards the Leſſor confirms his Eſtate which he hath in the Lands (b), To have and to hold his Eſtate to him and to his Heirs: This Confirmation as to his Heirs, is void; for his Heirs cannot have his Eſtate which was but for Term of Life: But if he confirms his Eſtate by theſe Words, To have and to hold the ſame Land (c), to him and his Heirs, this makes a Fee; for that the Words, To have and to hold, &c. go to the Land, and not to the Eſtate which he hath. Litt. ſect. 524.

The *Habendum* inlarges the Eſtate.

(b) The Eſtate which he hath is but an Eſtate for Life, which cannot be extended to his Heirs; but if he confirm the Eſtate for Life in the Premiſſes, *Habendum* the Land to him and his Heirs, this ſhall inlarge his Eſtate, and create in him a Fee. *Co. Litt.* 299. *a.*

Not ſaid *Habendum* the Eſtate, but the Land.

(c) *Note*; It is not ſaid, *Habendum* the Eſtate, for that is but an Eſtate for Life: But *Habendum* the Land to him and his Heirs, and where the Land goes to the Word *Heirs*, it is a Fee.

Leſſor makes a Deed to the Leſſee for Years, with the Words *Dedi & conceſſi* to him for Life, this veſts an Eſtate for Life without Livery.

Where I let Land for Years, and afterwards I make to the Leſſee a Deed with theſe Words, Dedi & conceſſi the ſaid Land, to hold for Life, and I deliver him the Deed, he hath preſently (d) an Eſtate for his Life in the Lands. Litt. ſect. 532.

Where no Livery requiſite.

(d) Without Livery or any other Matter whatſoever; for this ſhall operate by way of Confirmation to inlarge the Eſtate which he had before.

Where he ſhall by it take an Eſtate-Tail, and where a Fee-ſimple.

If the Deed be, Habendum to him and the Heirs of his Body, he hath an Eſtate-Tail.

Or Habendum to him and his Heirs, he hath a Fee-Simple; for this ſhall enure to him by way of Confirmation, to inlarge his Eſtate (e). Litt. ſect. 533.

A Confirmation cannot add a deſcendible Quality to one diſabled to take by Diſcent.

(e) *Note*; A Confirmation cannot add a deſcendible Quality, to him who is diſabled to take by Diſcent. *Beaumount*'s Caſe, 9 *Rep.* 141. *b.*

A Confirmation doth not bar a Rent or Common out of Land.

If a Man has a Rent-charge or Common out of certain Lands, and he confirms the Eſtate which the Tenant hath in the Land, yet the Rent-charge or

Common remains to (a) the Confirmor. Litt. ſect. 536, 537.

A Confirmation ſhall not extinguiſh a Rent, but a Releaſe ſhall.

A Man may abridge his Tenants Services, but not inlarge them.

A Man may, by Confirmation, abridge the Services by which his Tenant holds, but cannot inlarge them: As for Inſtance, where the Tenant holds of his Lord by Fealty, and 20 s. Rent, the Lord may confirm the Eſtate of the Tenant to hold at 12 d. Rent, and thereby he ſhall be diſcharged of all the reſt of the Rent. (b) But if he confirms, rendring a Hawk, &c. (c) this Confirmation is void, becauſe he reſerves a new Thing which was not Parcel of his Services before the Confirmation. Litt. ſect. 539.

A Lord may releaſe his Right in the Tenancy, ſaving Fealty and Rent.

A Confirmation rendring a new Thing, is void.

A Rent-charge for Life cannot be confirmed in Fee, and why.

A Man grants a Rent-charge to another for Life, and afterwards confirms his Eſtate in the Rent, Habendum to him in Tail or Fee; this is void to inlarge the Eſtate, (d) becauſe he who confirmed had not any Reverſion in the Rent. (e) Litt. ſect. 549. But where a Man is ſeiſed in Fee of a Rent-charge, and grants it for Life, and afterwards confirms it in Fee or in Tail, there it is good. (f) Litt. ſect. 549.

But where a Man hath a Rent-charge in Fee, and grants it for Life, he may confirm it in Fee.

It had been good, if Land.

No Reverſion of a Rent *de novo*.

It may of a Rent *in eſſe*.

Where a Confirmation is good, where a Releaſe is not.

In ſome Caſes a Confirmation is good, where a Releaſe is not; as if I let Land to A. for Life, who lets it to B. for twenty Years, who enters: Now if I confirm the Eſtate of the Tenant for twenty Years, (g) and the Tenant for Life dies during the Term, I cannot enter during the Term. Litt. ſect. 517. Poph. 105. Hall *and* Arrowſmith's *Caſe*.

There muſt be Privity to a Releaſe.

And what Acts are a Confirmation of a Leaſe.

And the Acceptance of Rent will make a Confirmation of a Leaſe: Alſo if a Man leaſes for Life, reſerving Rent upon a Condition of Re-entry; if, after the Condition is broke by Non-payment of the Rent, the Leſſor diſtrains for the ſaid Rent, this Act ſhall be

(a) A Confirmation ſhall not extinguiſh the Rent or Common, but a Releaſe ſhall. *Co. Litt.* 305. *a.*

(b) So where there is Lord and Tenant by Fealty, and 20 *s.* Rent, the Lord may releaſe all his Right in the Tenancy, ſaving the Fealty and 12 *d.* or any other ſmall Rent; but he cannot have a new Kind of Service. *Co. Litt.* 305. *b.*

(c) Which is a new Thing.

(d) Had it been of Land, it had been good.

(e) Becauſe it is a Rent *de novo*, but then created, and not before.

(f) Becauſe it is a Rent *in eſſe*, and not a Rent *de novo*.

(g) A Releaſe would not operate for want of Privity. *Litt. ſect.* 517.

a Confirmation of the Leaſe, ſo as he cannot enter. 2 Danv. Abr. 128.

A Releaſe to the Leſſor for Years of my Diſſeiſor is void for want of Privity, but a Confirmation is good.

If I am diſſeiſed, and my Diſſeiſor leaſeth for Years, and I releaſe to the Tenant for Years, this is void for want of Privity; but if I confirm it, it is good. Litt. ſect. 547.

A Confirmation to my Diſſeiſor is good without the Word *Heirs*, becauſe he was then ſeiſed in Fee.

If I am diſſeiſed, and confirm the Eſtate (a) to the Diſſeiſor, (b) without the Word Heirs, this is good; becauſe the Diſſeiſor was at the Time of the Confirmation ſeized in Fee; (c) and then ſuch Deed of Confirmation cannot alter his Eſtate without Entry. Litt. ſect. 519, 520.

Releaſe for a Day or an Hour is good for ever.

Confirmation cannot be for a Time.

Dean and Chapter confirm the Leaſe, a Leaſe of ſixty Years for fifty Years, & *non ultra*, it is good for the ſixty.

A Dean and Chapter confirm *Dimiſſionem præd.* of ſixty Years for fifty Years, & *non ultra*; the fifty Years are expired: By the Words *Dimiſſionem præd'* it goes to the whole Term; but if it had been for fifty Years only, without theſe Words, then it had been good but for ſo much. *Cr. El.* 447. *pl.* 12. 472. *pl.* 34.

If my Diſſeiſor leaſes for Life, Remainder in Fee, and I releaſe to the Tenant for Life, this ſhall enure to him in Remainder; but a Confirmation ſhall extend only to the Tenant for Life.

If my Diſſeiſor leaſes for Life, Remainder in Fee, and I releaſe to the Tenant for Life, this ſhall enure to him in Remainder; but if I confirm the Eſtate of Tenant for Life, it ſhall extend only to himſelf. (d) Litt. ſect. 521.

Two Joint Tenants, one confirms the Eſtate of the other; they are but as they were before.

But if it be *Habendum* to him and his Heirs, he hath a ſole Eſtate.

Two Perſons are Jointenants, the one confirms the Eſtate of the other, he hath but a joint Eſtate as he had before; (e) but if there be in the Deed theſe Words, Habendum to him and his Heirs, then he hath a ſole Eſtate. (f) Litt. ſect. 523. Vaugh. 45.

When two join in a Deed, and one only hath the Intereſt, how it enures.

How it is where an Eſtate upon Condition is confirm'd.

Where a Confirmation ſhall extinguiſh a Condition, and where not.

Where a Man hath an Eſtate upon Condition, altho' the Feoffor, or his Heirs, confirm this Eſtate, yet the Eſtate is not altered, as to the Condition, but that always remains; and therefore nil operatur by ſuch a Confirmation. (g) Poph. 51. 1 Rep. 147. a. b.

(a) Or Releaſe. *Co. Litt.* 296.

(b) For a Day or an Hour. *Sect.* 520. For a Confirmation cannot be for a Time, but is as perfect as it can be, notwithſtanding the Reſtriction of Time. *Vaugh.* 27.

(c) By Virtue of his Diſſeiſin.

(d) *Note*; A Difference between a Releaſe and Confirmation.

(e) This Confirmation makes no Alteration in the Eſtate.

(f) When two join in a Deed, and the one hath only the Intereſt, it enures by way of Confirmation from the other, not by way of Eſtoppel. *Cr. El.* 701. *pl.* 16.

(g) When the Eſtate of him to whom the Confirmation is made, is upon expreſs Condition, there the Confirmation to him doth not take away the expreſs Condition;

but if the Feoffee upon Condition, makes a Feoffment over, ſo that this Eſtate is only ſubject to the Condition contained in another Conveyance, and no Condition expreſſed or annexed by his Feoffor to his Eſtate; there a Confirmation by abſolute Words ſhall extinguiſh the Condition, which was annexed to the Eſtate of the firſt Feoffee. 1 *Rep.* 147. *a. b.*

A Confirmation cannot inlarge what is determinable, upon expreſs Condition; nor diſcharge a Condition, but bind the Right of him who made it in the Poſſeſſion of him to whom made.

A Confirmation cannot inlarge that which is determinable by expreſs Condition or Limitation. 1 *Rep.* 147. *b.*

Alſo it ſhall not diſcharge a Condition, but is only to bind the Right of him who made it in the Poſſeſſion of him to whom it is made. *Poph.* 51.

Feoffee upon Condition makes a Feoffment over; the Feoffor confirms to him in Fee; this is a Confirmation *perficiens*.

**If the Feoffee upon Condition makes a Feoffment over, and the Feoffor confirms the Eſtate to him and his Heirs; this is a Confirmation** perficiens, **and makes the Eſtate a Fee-Simple abſolute, which was before conditional.** 9 Rep. 142. a.

A Leaſe to *A.* at a Day to come, and alſo another to *A.* at a Day to come, this is not a Surrender, but rather a Confirmation.

**A Leaſe is made to** A. **to commence at a Day to come, and afterwards another Leaſe is made of the ſame Land to** A. **to commence at a Day to come;** (a) **this is not a Surrender, but rather a Confirmation.** Litt. Rep. 270.

(a) Theſe Leaſes muſt be of the ſame Term, for if the ſecond Leaſe were for more or leſs Time, it will be a Surrender of the firſt. 5 *Rep.* 11. *b.*

If they were for more or leſs Time it will be a Surrender.

A Man, in Conſideration of Love to his Son, bargained, ſold and confirmed to his Son; the Deed was inrolled; This ſhall not paſs by way of Uſe, but it ſhall by Confirmation, becauſe the Son was in Poſſeſſion.

**A Man, in Conſideration of the natural Love and Affection which he did bear to his Son, bargained and ſold, gave, granted and confirmed, the Land to him and his Heirs; the Deed was inrolled:** (b) **The Queſtion was, whether this Land ſhould paſs, and how: Reſolved, That it ſhould not paſs by way of Uſe, unleſs Money was paid, or the Eſtate executed; but becauſe the Son was then in Poſſeſſion, it was held to enure by way of Confirmation.** Cr. Jac. 127. pl. 17. Vide Scudamore **and** Croſſing, 1 Vent. 137, 138, 139, &c. 7 Co. 40. 2 Co. 24. Cr. Eliz. 394. 1 Lev. 56.

(b) The Inrollment or not Inrollment of the Deed ſignified nothing in this Caſe.

*A.* infeoffs *B.* to the Uſe of his Son, upon Condition: Before any broken, *A.* and the Son grant and confirm to *E.* a Rent for Life; the Conditions are broken; this being all in one Deed, the Rent was never ſubject to the Condition.

A. **ſeiſed in Fee infeoffs** B. &c. **to the Uſe of** D. **his Son, and his Heirs, upon certain Conditions; before any were broken** A. **and** D. **his Son grant and confirm to** E. **a Rent-charge out of the Land for her Life, and afterwards the Condition is broken; by this Grant and Confirmation, being all in one Deed, the Rent was never ſubject to the Condition.** (c) 1 Rep. 147, 148.

(c) But remained good to *E.* for Life, notwithſtanding, upon the Condition broken and Entry of *A.* the Eſtate was reveſted in *A.*

But remained good notwithſtanding, by the Re-entry of *A.* the Eſtate was reveſted.

Of

# Of Covenants in General.

What a Covenant is.

A Covenant is an Agreement which ought to be by both Parties by Writing ſealed and delivered; and therefore this Word Covenant is the Word of both, as a Contract is actus contra actum. See 1 Roll. Rep. 80.

Divers Sorts of Covenants, real and perſonal.

Covenants are in Deed, or in Law; and there is a Covenant Real and Perſonal: A real Covenant is that whereby a Man ties himſelf to paſs a Thing real, as Lands or Tenements; or to levy a Fine of Lands, &c. And Covenant perſonal, is where the ſame is meerly perſonal; as if a Perſon covenants with another to build him a Houſe, or to ſerve him, &c. 5 Rep. 16.

Inherent, collateral, affirmative, negative.

Alſo Covenants are inherent, which tend to the Support of the Thing granted, or are collateral to it; and are affirmative or negative; executed, of what is already done; or executory, of ſomething to be done in futuro, which is the uſual Covenant. 1 Vent. 176. Dyer 112.

Covenants are declaratory and obligatory; and the Difference.

Some Covenants are declaratory, and ſome obligatory; and there is a great Difference between them; for thoſe which are declaratory, ſerve to limit and direct the Uſes; thoſe which are obligatory, as for quiet Enjoyment, free from Incumbrances, &c. ſhall never be conſtrued to raiſe an Uſe, but only to have an Action of Covenant upon. 1 Sid. 27.

Covenants to be taken ſtrongly againſt Covenantor.

1. All Covenants ſhall be taken moſt ſtrongly againſt the Covenantor, leſt by the obſcure Wording of his Covenant he ſhould find means to evade and elude it. Litt. Rep. 207. Mo. 458. 8 Co. 83.

Where the Intent of the Parties can be collected, Covenant will lie.

2. Where-ever the Intent of the Parties can be collected out of a Deed, for the not Doing or the Doing of a Thing, an Action of Covenant will well lie. Chan. Rep. 194.

Tho' the Words of an Indenture are the Words of Feoffor only, if Feoffee ſeals it, it is the Deed of both.

3. Although in an Indenture, the Words are the Words of the Feoffor only; yet if the Feoffee puts his Seal to one Part of it, (a) it is the Deed of both. Co. Litt. 230. b. Poſtea 4, 58. Lucas 47, 48.

Leſſee may have Covenant, tho' he ſeals not the Leaſe.

(a) Where the Leſſor ſeals the Leaſe, and the Leſſee doth not; yet the Leſſee may have his Action for Covenant broken. *Owen's Rep.* 100. *Cro. Eliz.* 212. See 1 *Leon. Caſe* 458. *Cr. Ja.* 240. 1 *Bulſt.* 21. *Cr. Ja.* 399, 521. 3 *Bulſt.* 163. 1 *Roll. Rep.* 359. 2 *Roll. Rep.* 63. *Poph.* 136.

Leſſee ſeals his Part, but the Leſſor doth not, *nil operatur.*

But where an Indenture of Leaſe is ſealed by the Leſſee, and not by the Leſſor, *nil operatur*, neither in Reſpect of the Eſtate nor of the Covenants. *Plow.* 18, 19.

Where a Covenant may be with a Stranger to the Deed, and where not.

Where a Deed is indented, and is not between Parties, a Covenant may be in it with a Stranger, as if it was a Deed-Poll; or in the firſt Perſon; as, *Know ye that I* A. B. *&c. Aliter*, if it is between Parties. *Gilby* and *Copley*'s Caſe, 3 *Lev.* 139, 140.

Grants and Agreements in Indentures are mutual.

But Covenants of the one are not the Covenants of the other.

4. The Grants and Agreements in an Indenture are the Grants and Agreements of both. Dy. 6. b. N°. 3. Antea 3. Poſtea 5, 58. But the Covenants which are of one Side, are not the Covenants of the other Side. Ibid.

The Word Covenant in an Indenture is the Word of both.

5. In an Indenture the Word Covenant is the Word of both; as if Leſſee covenants to pay the Rent, this amounts to a Reſervation. 1 Roll. 80, 81. Antea 3, 4.

If obliged to pay ſo much at ſuch a Day, it is a Covenant.

6. I oblige my ſelf to pay ſo much at ſuch a Day, this is a Covenant. Hard. 178. Chan. Rep. 249. And an Action of Covenant lies upon the Default of the firſt Day; but Debt doth not lie till the laſt. Co. Litt. 223. b. 47. b. 292. b. 3 Co. 22. a. Cr. Ja. 505. Cr. Car. 241. 4 Co. 94. 5 Co. 51. Poſtea 7.

If *A.* agrees to pay B. 100*l.* for Lands, it is a mutual Covenant.

7. It is agreed, That A. ſhall pay B. 100 l. for Lands in D. It ſeems to be a mutual Covenant, and Covenant lies if he will not convey the Lands. 1 Sid. 423. Raym. 183. Antea 6.

Covenant by Indenture Tripartite between Three, & *quilibet eorum*; if one is damnified, they muſt join.

Covenant *conjunctim & diviſim* is joint or ſeveral.

8. A Covenant was by Indenture Tripartite between three, and quilibet eorum; and one who was damnified brought Covenant againſt another. Cur. Both ought to join. (a) 2 Leon. Caſe 60. Vide 5 Rep. 18. b. Hob. 172. 2 Leon. 27. Yel. 177. 5 Co. 19. a. 1 Show. 8. 2 Keb. 44. 2 Roll. Abr. 149. Skin. 401. 2 Sid. 107. Comb. 115. Skin. 401. Carth. 98. Comb. 163.

(a) A Covenant with two, *conjunctim & diviſim*, is joint or ſeveral according as the Caſe[*] is. *Moor* 849. N°. 1154. *Vid. Raym.* 459, 460, 461. 1 *Saund.* 155.

[*] *Viz.* The Intereſt whereupon the Covenant is founded, *ibid.*

A Covenant with three jointly and ſeverally, that they ſhould pay, *&c.* and one of the three was ſued, and a Breach aſſigned that he hath not paid: And it was demurred unto, becauſe he had not ſaid, *Nor any of the other had not paid. Curia:* If the Action had been brought againſt all, the Non-payment of all muſt be alledged; but when brought but againſt one, then it is ſufficient to ſay, *That he hath not paid*;

and if either of them hath paid, the Party ſued ought to plead it.

So if Two are jointly and ſeverally bound in a Bond, in an Action againſt one, it is ſufficient to ſay, *That he hath not paid it*. *Latch* 50. In a Charter-party the Covenants are ſeveral and not joint. 5 *Rep.* 22. *b.*

*Conventum & agreatum* between the Parties make a joint Covenant.

Conventum & agreatum eſt (a) **between the Parties make a joint Covenant, and they ought all to join,** aliter **where ſeveral.** 1 Bulſt. 25, 26.

(a) Where *proviſum & agreatum eſt* doth not amount unto a Condition, but a Covenant, 2 *Mod. Rep.* 77. Covenant lies upon the Word *Proviſo*, by Way of Agreement to pay Money. 1 *Lev.* 155.

Where *Proviſum & agreatum* is not a Condition but a Covenant.

The Word either may be taken conjunctive or disjunctive, and hath often Reference to more than two. 2 *Sid.* 107.

If Tenants in common Covenant, it is ſeveral; otherwiſe if Jointenants or Parceners.

9. **If two Tenants in common Covenant, there Covenants are ſeveral; contra of Parceners, or Jointenants. Per Chief Juſtice** Holt. **Coleman and Sherman,** Mich. 1 W. & M. 939. pl. 1154.

A Releaſe of Suit is no Releaſe of Covenants.

10. **A Releaſe of all Suits is no Releaſe of a Covenant before it is broken.** Secus **of all Covenants.** (b) Co. Litt. 292. 5 Rep. 70.

(b) A Covenant is no Duty, nor any Cauſe of Action till broken, and therefore cannot be diſcharged by a Releaſe of all Actions. * *Allen*'s *Rep.* 93.

A Covenant is no Duty, nor Cauſe of Action, till broken.

* But a Releaſe of all Covenants will be a good Diſcharge. 5 *Rep.* 70.

For Breach of reciprocal Covenants they may ſue one another.

11. **Where Covenants are reciprocal,** * **they ought to ſue one another for the Breach of them.** (c) Poph. 198. *See* 2 Mod. 34, 37, 309. Poſtea 12, 13, 14, 15, 16.

* Where Covenants are reciprocal between Parties of the one Part, and Parties of the other Part, no Covenant or Grant can be made with any who is not Party to the Deed: But where it is not reciprocal with the Word *Between*, but, *&c. To all Chriſtian People*, &c. There a Covenant or Grant may be made to divers ſeveral Perſons. 2 *Roll. Abr.* 22. *Letter* F. 1.

(c) Where Covenants are reciprocal, they cannot be pleaded one in Bar of the other. 2 *Mod. Rep.* 309. *Poſtea* 13. 2 *Rep.* 76. 3 *Lev.* 41. 7 *Co. Ughtred's Caſe.* *Cr. Ja.* 645. 3 *Keb.* 352. 1 *Show.* 391. *Comb.* 265.

*Note*; The Word *Between* makes the reciprocal Covenant.

Non-performance of a reciprocal Covenant is no Bar to another Covenant.

12. **Non-performance of a reciprocal Covenant is no Bar to an Action for the Breach of another Covenant. Chief Juſtice** Jones 216. 2 Saund. 156, 157.

Covenant to ſerve me a Year, and I covenant to pay him 10 *l*. Tho' he ſerves me not, an Action lies for the 10 *l*.

13. **If a Man covenants with me to ſerve me for a Year, and I covenant to pay him** 10 l. **although he do not ſerve me, he ſhall have an Action for the** 10 l. **But contra,**

But *ſecus* if I covenant to give him 10 *l.* for his Service.

contra, If I covenant to give him 10 *l.* for his Service. 15 H. 7. 10. per Fineux. Mod. Caſes in Law and Equity 41. (a) Poph. 198. Antea 11 & 12, & poſtea 14, 15.

(a) Each Party hath Remedy on mutual Covenants. 2 *Mod. Rep.* 76, 77, 34, 309. What are mutual Covenants, and what not, *vide Mod. Caſes in Law and Equity* 40, 41, 69, 70, 105, 294, 295. One Covenant may be pleaded to another. 1 *H.* 7. 15. 20 *H.* 7. 24. But the Book, *viz. Keilw.* 34. notes a Difference where the Covenant is one, and where two Sentences; for in the firſt Caſe, one Covenant may be pleaded in Diſcharge of another, but not in the laſt. 2 *Mod. Rep.* 76.

14. If one of the Parties covenants to aſſure Lands, and the other, in Conſideration of the ſame Covenant performed, (b) covenants to pay a Sum of Money, he is not bound to pay the Money, till the Lands are aſſured. 2 Saund. 156.

(b) Not to be performed.

But otherwiſe, if in Conſideration of the Covenant to be performed.

15. But it is otherwiſe, if the Covenant had been in Conſideration of the Covenant to be performed. Ibid. & 3 Leon. Caſe 290. Brocas's Caſe. Vide Poſtea 16.

Payment to be made on Performance, muſt alledge the Performance, to maintain an Action for the Money.

16. Where Payment is to be made, on the Performance of a Matter precedent, there the Party is to alledge Performance of the Matter, before he can maintain an Action to recover the Money: But contra, where the Matter to be performed is ſubſequent to the Payment. 1 Bulſtr. 168. viz. Vaghtrea's Caſe. 7 Co. 9, 10. Vide antea 13, 14, &c. Poſtea 17.

*A.* covenants with B. to aſſure him Lands, and *B.* in Conſideration of the ſame to be performed, covenants to pay the Money, he is not bound to pay it till the Covenant is performed.

17. A. covenants with B. to aſſure him the Inheritance and Freehold of his Copyhold Eſtate. B. covenants, in Conſideration of the ſame performed, to pay ſo much Money. B. is not bound to pay the Money before the Aſſurance made; but if the Covenant is in Conſideration of Covenants to be performed, aliter. 3 Leon. 219. Antea 14, 15, 16.

Covenant to pay Money on the other's Covenant to do ſuch an Act, is a Promiſe againſt a Promiſe, and one may have his Action for the Money, and the other for the Breach of the Covenant.

18. Where there is a Covenant and Promiſe to pay ſo much Money, (c) upon the Covenant and Promiſe of the other to do ſuch an Act; this is a Promiſe againſt a Promiſe, and the one may have his Remedy by way of Action for the Money, and the other his Action for the Breach of Covenant and Promiſe. (d) Dyer 270. pl. 23. Videa antea 11, 12, 13, &c.

(c) And the other Covenants and Promiſes to do the Act.

(d) They have each a Remedy upon theſe mutual Covenants. In the aſſigning of a Breach upon reciprocal Covenants, it is not neceſſary to aver Performance on the Plaintiff's Side. 2 *Mod. Rep.* 309, 34. and *vide* 1 *Sand.* 319. 1 *Lev.* 274. 1 *Sid.* 423. *Raym.*

*Raym.* 183. 2 *Keb.* 541. *&* *Hil.* 29 *&* 30 *Car.* 2. *Dyeſsly* and *Tuer.*

Where Covenants are diſtinct and mutual, there may be ſeveral Actions brought againſt each other, as the Caſe of *Ware* and *Chappel*, *Style's Rep.* 186. Where *Ware* was to raiſe 500 Soldiers, and bring them to ſuch a Port, and *Chappel* was to find Shipping; for which * he was ſued upon the Covenant, tho' the other had not raiſed the Soldiers: † For that can be only in Mitigation of Damages, and ſo is no Excuſe for the Defendant, 2 *Mod.* 75, 76. *Modern Caſes in Law and Equity* 40, 41.

* *Viz.* The not finding Shipping.

† And the Action did lie.

Where the laſt Words which are general, ſhall be expounded by the firſt ſpecial Words.

19. **Where in a Covenant the laſt Words which are general, ſhall be expounded by the firſt Words, which are ſpecial and particular.** 1 Saund. 59, 60. 3 Mod. 69. Poſtea 25, 26. Fitz-Gibbons 214 to 224, and 199, 200.

A particular Covenant reſtrains a general Covenant in Law.

20. **A particular Covenant in Fact reſtrains a general Covenant in Law.** (a) Ibidem. Poſtea 21, 22, 23, 24.

An expreſs Covenant qualifies a Covenant in Law.

(a) An expreſs Covenant qualifies the Generality of the Covenant in Law, and reſtrains it by the mutual Conſent of both Parties; ſo that it ſhall not extend farther than the expreſs Covenant. *Co.* 4. *Rep.* 80. *b. Noke's Caſe. Cr. Eliz.* 674. *Yel.* 175.

Words *Yielding and Paying* are an expreſs Covenant.

The Words *Yielding and Paying* were adjudged to be an expreſs Covenant, whereupon an Action lies againſt an Executor. *Style Rep.* 406, 431. 2 *Brownl.* 215. *Sid.* 266, 401. 2 *Mod.* 92. 1 *Vent.* 10. 2 *Jones* 152. 3 *Lev.* 155.

Reſtraining Words, beginning or ending a Sentence, govern all.

21. **Reſtraining Words at the Commencement or End of a Sentence, govern all.** 1 Sid. 328. Antea 20. Poſtea 22, 23, 24.

A general Covenant is reſtrained by a particular expreſs, but not implied Covenant.

22. **A general Covenant may be reſtrained by a particular expreſs Covenant, but not by an implied Covenant.** Litt. Rep. 64, 67. Antea 20, 21. Poſtea 24, 25.

Where two particular Covenants, one may reſtrain the other.

23. **And where there are two particular Covenants, the one may reſtrain the other.** Litt. Rep. 64. Antea 20, 21, 22. Poſtea 24, 25.

Words of Reſtraint at the Beginning or Middle of a Sentence, how expounded.

24. **If the Words of the Reſtraint are at the Beginning of the Sentence, or in the Middle, they ſhall always be expounded according to the Generality of the Words, Intent of the Parties, and Scope of the Deed.** Litt. Rep. 68. Antea 20 to 24.

Covenants coupled with an intire Sentence, the latter may explain the former.

25. **Where Covenants are coupled with an intire Sentence, the later may explain the former;** aliter **if the Sentences are ſeveral.** Litt. Rep. 63. Antea 19. Poſtea 26.

Where an Exception put laſt in a Covenant, refers to all.

26. **When the Exception is laſt put in the Covenant, it refers to all the Premiſſes.** Litt. Rep. 63. 9 Rep. 53. Antea 19, 25.

In Covenant, Notice not to be ſo ſtrictly given as on Bond.

27. In an Action of Covenant, Notice is not ſo ſtrictly to be given, as it is in the Caſe of a Bond, where a Penalty is to be recovered. Cro. Jac. 391. pl. 4. Poſtea 28.

Notice need not be laid in a Declaration on a Covenant to bear harmleſs againſt a Man by Name.

But on a general Covenant to ſave harmleſs it muſt.

28. Where a Covenant is to ſave harmleſs againſt a Man by Name, there needs not any Notice to be laid in the Declaration; but if the Covenant is general to ſave harmleſs, and doth not ſay againſt whom, there a Notice muſt be alledged, Trin. 25 Car. 2. Rot. 225. Jenkinſon *v.* Tod. Antea 27.

A Covenant or Bond to perform a void Grant, is void.

29. A Covenant to perform a void Grant is void. * So alſo is a Bond to perform it. Raym. 27. 1 Lev. 45. Poſtea 39; 43.

Where a Covenant is only *malum prohibitum*, it is good.

But not to do a Thing *malum in ſe*.

30. Where a Covenant is only malum prohibitum, (as not to import prohibited Goods) there it is a good Covenant, and an Action lies upon the Breach of it; but where it is to do a Thing which is malum in ſe (as to kill a Man) there is it a void Covenant, and no Action lies upon it. Hill. 35 & 36 Car. 2. and Co. Litt. the Caſe in Point, Antea 2.

A later Deed cannot take away the Effect of the firſt. Nor a later Covenant be pleaded in Bar to a former.

31. The later Deed cannot take away the Effect of the firſt; for a later Covenant cannot be pleaded in Bar to a former. 2 Vent. 218.

Diſjunctive Covenants muſt be pleaded to be ſpecially performed.

But when in the Copulative and Affirmative, general Pleading is ſufficient.

32. Covenants in the Diſjunctive ought always to be pleaded to be ſpecially performed; but when in the Copulative and Affirmative, general Pleading of Performance is ſufficient. (a) Savile 120. Palmer 70. Co. Litt. 303. b. Kelw. 95. 1 Leon. 136. 1 Lev. 303.

If Covenantor diſables himſelf to perform; an Action lies immediately.

33. When the Covenantor hath diſabled himſelf to perform, an Action lies immediately. Cro. El. 479. pl. 11. Vide 5 Co. 20, 21. 2 And. 18. Mo. 452. Cr. Eliz. 450. Poph. 109. 1 Bulſt. 22. Poſtea 55.

Aſſignee of a Reverſion may have Covenant againſt Leſſee for not leaving it in repair.

34. Aſſignee of a Reverſion ſhall have Covenant againſt the Leſſee for Years, * at the End of the Term, for not leaving of it ſufficiently repaired. Cro. El. 600. pl. 6. 617. Gouldſ. 175, & vide Moor 150. 1 And. 82.

35. A

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* Let the Leaſe be good or void, yet when there is an Eviction, Covenant lies. 5 *Co.* 17. *a.* and *vide* 2 *Roll. Rep* 399. *Palm.* 388. *Carth.* 98. 1 *Roll. Abr.* 519. 2 *Leon.* 104 *Cr. Eliz.* 214. *Raym.* 257.

(a) A Diſjunctive Covenant is always for the Benefit of the Covenantor; and if one Part is become impoſſible, the Covenantor is excuſed. *Lutw.* 694. *Co. Litt.* 303. *b. Savile* 120. *Cr. Eliz.* 560, 232. 1 *Leon.* 311.

* Leſſee aſſigns, and the Leſſor accepts of the Aſſignee for his Tenant; he cannot bring Debt for his Rent, but he may bring Covenant againſt the firſt Leſſee. 3 *Co.* 24. *b. Mo.* 600. *pl.* 829. 2 *And.* 133. *&* *vide* 1 *Sid.* 402. 3 *Lev* 233. *Carth.* 178. *Rep. of Caſes in Chan. and K. B. from the* 4 *to* 7 *Year of Geo.* 2. 167. *Cr. Ja.* 334. 2 *Bulſt.* 152. 1 *Roll. Rep.* 366. 2 *Saund.* 181. *&* *vide* 3 *Lev.* 233. *Carth.* 178.

So when the Leſſee aſſigns his Term, and the Leſſor his Reverſion, and the Aſſignee of the Reverſion accepts of the Rent of the Aſſignee of the Term, yet the Aſſignee of the Reverſion may bring Covenant againſt the firſt Leſſee. 1 *Sid.* 402. 3 *Lev.* 233. *Carth.* 178. *Brownl.* 20. 1 *Sid.* 447.

And it has been held, That the Grantee of a Reverſion may maintain an Action of Covenant againſt the Leſſee, as well in the County where the Demiſe was made, as in the County where the Lands lie. 1 *Saund.* 240. *Carthew's Rep.* 183. 3 *Lev.* 154. But if brought againſt the Aſſignee of the Leſſee, the Action muſt be local, for by the Aſſignment the Privity of Contract was deſtroyed, and nothing but a Privity of Eſtate remained. *Carth.* 182. 1 *Salk.* 80. 3 *Mod.* 336. 1 *Show.* 191. 6 *Mod.* 194.

Covenant which runs with the Land lies againſt an Aſſignee, though not named.

So againſt Executors.

35. **A Covenant which runs with the Land, lies againſt an Aſſignee, tho' not named; and ſo againſt an Executor, except it is perſonal** (b). Cro. El. 553. pl. 3. 1 Lev. 109. 1 Roll. Abr. 521. Cr. Eliz. 457. Mo. 399. 5 Co. 24. 1 Sid. 157. Raym. 80. Mo. 399. Cr. Eliz. 383. Mo. 357. pl. 486. Goldsb. 129. 5 Co. 77. Carth. 519.

On an Exception Covenant goes with the Tenement, and Action lies againſt the Aſſignee.

36. **A Leſſor made a Leaſe of an Houſe, except two Rooms, and free Paſſage to them; the Leſſee aſſign'd the Term, and the Leſſor brought Covenant againſt the Aſſignee for diſturbing him in his Paſſage to thoſe Rooms: Adjudg'd that the Action lies; for the Covenant goes with the Tenement.** 1 Salk. 196. Carth. 232. 1 Show. 388. Vide Mo. 553. Cr. Eliz. 657.

**A Covenant to repair, runs with the Land, and goes to the Heir, tho' not named.**

A Covenant with the Leſſor, his Executors and Adminiſtrators to repair; this is a Covenant which runs with the Land, and the Heir, tho' not named, ſhall have it. 2 *Lev.* 92. *Skin.* 305. S. C. *Lucas* 158.

But a Covenant in Groſs ſhall not go to the Heir, like a Covenant annexed to an Eſtate. *Palm. Rep.* 558.

**Covenant to a Man, his Heirs and Aſſigns, yet the Executors may bring the Action.**

Where a Covenant is to a Man, his Heirs and Aſſigns, yet the Executors, tho' not named, who are the Repreſentatives of the Teſtator, may bring the Action. 2 *Lev.* 26. 1 *Vent.* 175.

The Word *Covenant* makes a Leaſe, tho' the Word *Grant* is omitted.

37. **It is a general Rule, that the Word** Covenant **will make a Leaſe, tho' the Word** Grant **is omitted.** 2 Mod. Rep. 80. Eſſex **and** Tidſale. Hob. 34.

An Executor may bring Action on a Covenant to his Teſtator and his Heirs, for a Breach in the Teſtator's Life.

38. **Tho' a Covenant is made only to** J. S. **his Heirs and Aſſigns, yet if there is a Breach in the Teſtator's Life, the Executor may well bring an Action upon it.** 1 Vent. 179.

A Covenant by an Attorney, for quiet Enjoyment, amounts to a Leaſe.

39. **An Attorney covenants on the Behalf of another, that the Covenantee** quiete & pacifice **should enjoy**

**The Attorney muſt not make the Leaſe in his own Name.**

When an Attorney makes a Leaſe as Attorney, by Virtue of a Warrant to him for that Purpoſe made, he muſt not joy ſuch Lands, &c. Curia; Theſe Articles amount to a Leaſe, though made by a Stranger, for he acted on the Behalf of the Owner of the Land, and it ſhall be taken, that he had his Authority to demiſe. 2 Vent. 62.

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(b) Although the Leſſee hath not covenanted for him and his Aſſigns, yet Covenant lies for what is for the Support of the Thing demiſed, for that it is appurtenant to, and runs with the Land. 5 *Rep.* 24. *b.* 1 *Lev.* 109.

An implied Covenant lies not againſt an Executor.

40. An implied Covenant lies not againſt an Executor. Moor 74. N°. 240.

But *Yielding* and *Paying* make an expreſs Covenant.

41. But the Words Yielding and Paying, (a) are adjudged to be an expreſs Covenant, on which an Action lies for Rent upon it, againſt an Executor. Style 406, 431. 1 Brownl. 215. 1 Sid. 266. 401. 2 Mod. 92. 1 Vent. 10. 2 Jones 102. 3 Lev. 155.

To Covenants for Non-Feaſance and for Feaſance muſt plead to the one, that he hath not done, and to the other, Performance generally: But if the Covenant for Non-Feaſance is void, may plead Performance generally.

42. Where there are Covenants for Non-Feaſance, and Covenants for Feaſance, the Defendant muſt plead to the one, that he hath not done, and to the other, that he hath performed generally; but if the Covenant for Non-Feaſance is a void Covenant, he may plead Performance generally. Moor 859. N°. 1175. Godb. 212. Hob. 12, 13.

A Covenant to enjoy a void Leaſe is void, but not if only voidable.

43. A Covenant to enjoy a void Leaſe is a void Covenant, but where the Leaſe is but voidable, it is not. (b) Moor 875. N°. 1223. Antea 29, 30. Poſtea 44.

An implied Covenant in Law is void, if the Eſtate created is void.

44. Where an Eſtate is created, in which is implied a Covenant in Law; there, if the Eſtate is void, the Covenant alſo is void; but where there is an expreſs Covenant in a Deed, there it is otherwiſe, altho' the Leaſe is void or voidable; as if the Covenant is, that the Leſſee ſhall enjoy during the Term; there, if the Leſſor reſigns his Benefice, the Covenant is good, altho' the Term is gone. Owen's Rep. 136. 1 Brownl. 21. Mo. 877. & vide 2 Brownl. 134, 136, 158. Antea 29, 33, 44.

If Leſſor covenants, after the End of the Leaſe, to make another to the Leſſee and Aſſigns; and before the Term ends Leſſee dies, yet Leſſor muſt make the Leaſe to his Executor or Aſſignee.

45. Where there is a Covenant from the Leſſor, that after the End of the preſent Leaſe, he will make another Leaſe for another Term to the Leſſee and his Aſſigns: If the Leſſee dies before the Leaſe in Being is ended;

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not make the Leaſe in his own Name, but the Name of the Perſon authorizing him ſo to do. 9 *Rep. a.* 1 *Roll. Abr.* 330. 9 *Co.* 76. *b.* 77. *Cr. Eliz.* 115. *Mo. pl.* 1106. And there muſt be a particular Memorandum of the Matter indorſed on the Deed.

(a) The Words *Paying* and *Performing* make a Covenant and not a Condition. 2 *Mod. Rep.* 35, 91, 92.

(b) Upon an Eviction of Leſſee for Years, all Rents, Bonds and Covenants depending upon the Intereſt are gone. *Yelv.* 123. 1 *Sid.* 309. *Style* 357. *Yelv.* 19.

the Leſſor is notwithſtanding bound to make a Leaſe to the Executor of the Leſſee, or Aſſignee of the Leſſee. Plow. Com. 289, 290, &c.

A Grant of the Manor of D. and Covenant he hath good right to grant, and had no Right, is a Breach of Covenant.

46. A Man grants to another his Manor of D. in which he hath nothing, and covenants that he hath good Right to grant it, whereas he had no Right, this is a Breach of Covenant. 2 Bulſtr. 12. Poſtea 48, 49.

If Leſſee for Years covenants not to alien on pain of Forfeiture, he hath a conditional Eſtate.

47. Where the Leſſee covenants that he will not alien ſub pœna foriſfacturæ, this is a Condition or a Defeaſance, and he by this hath a conditional and defeaſible Eſtate, eſpecially it being a Leaſe for Years, which may as well determine by Contract, as it may begin thereby. 2 Bulſtr. 290. 1 Roll. Rep. 68, 69. 1 Roll. Abr. 408. 1 Leon. 246.

A Bond to perform all Covenants to be performed in an Indenture wherein is a Covenant that he was rightful Owner, and was not; yet the Condition of the Bond is not broken.

To be performed, 3 *Leon. Caſe* 290.

48. A Man was bound to perform all Covenants which were to be performed in ſuch an Indenture, and there was a Covenant that he was rightful Owner at the Time of the Covenant; and was not; yet becauſe the Words of the Covenant being (which are to be performed) it was adjudged, that the Condition of the Bond was not broken; for that it goes only to Covenants to be performed in futuro. Litt. Rep. 205. 3 Leon. Caſe 290. Antea 46.

Whether the Words (*by any Act done by him*) at the end of a Covenant that he was ſeized, ſhall refer to all before, or only to the laſt Part.

49. A Man covenants that he is ſeized of a good, perfect, and indefeaſible Eſtate in Fee-ſimple, and that he hath good Right and lawful Authority to ſell, and there is not any Reverſion or Remainder in the Crown, for any Act done by the Defendant. The Plaintiff aſſigns a Breach, that he was not ſeized of a good Eſtate in Fee: Whether theſe Words (by any Act done by him) at the End of the Covenant ſhall refer to all before, or only to this laſt Part: Litt. Rep. 62, 63 to 69, and 203. Adjudged by all the Judges for the Plaintiff, and that the Covenant upon which the Breach was aſſigned, was an abſolute Covenant of itſelf. 203, &c. See Cro. Car. 106, 107. pl. 8.

A Covenant to permit to enjoy without Moleſtation, extends not to Perſonal Torts.

50. Where a Covenant is to permit a Man to enjoy without Moleſtation, the Word Moleſtation ſhall not extend to perſonal Torts, as to beating or aſſaulting of him; but to an Entry upon him, and a Diſturbance in his Poſſeſſion. Cro. El. 421. pl. 16.

Covenant not to aſſign a Choſe in Action; an Aſſignment in Equity is a Breach.

51. Upon a Covenant not to aſſign a Choſe in Action to any Perſon, (a) an Aſſignment in Equity is a Breach of the Covenant; for there cannot be an Aſſignment in Law of a Choſe in Action, but only
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(a) A perſonal Contract cannot oblige an Aſſignee, becauſe there wants that Privity which is between Leſſor and Leſſee, and his Aſſigns
of

**in Equity.** Raym. 459, 460, 461. 1 Mod. 113. of the Land, in reſpect of the Reverſion, and in Caſes of Leaſes of Goods perſonal, as a Flock of Sheep, *&c.* there is not any Privity nor any Reverſion, but meerly a Choſe in Action in the Perſonalty, which can bind none but the Covenantor, his Executors and Adminiſtrators. 5 *Rep.* 16. *b.* 17. *a.*

All Agreements muſt be according to the ſubject Matter, and be governed by the Parties Intentions, not to work a Wrong.

52. **All Agreements muſt** be ſecundum ſubjectam materiam, **if the Matter will bear it; (b) and in moſt Caſes are governed by the Intention of the Parties, not to work a wrong.** 2 Mod. Rep. 80.

(b) Covenants muſt be taken with reſpect to the whole Contents of the Deed. *Hob.* 275. *Mo.* 458. 8 *Co.* 83.

The Word *Covenant* is not neceſſary to make a Covenant, but any Agreement under Hand and Seal.

53. **There is no need of the Word** Covenant **to make a Covenant, but any Thing under Hand and Seal of the Parties which imports an Agreement, will amount to a Covenant.** (c) 2 Mod. Rep. 89. 1 Roll. Abr. 518, 519. Vide 1 Leon. 122. 1 Mod. 113.

(c) Where-ever there is an Agreement under Hand and Seal, Covenant lies. 2 *Mod. Rep.* 91.

*Proviſo* by way of Agreement amounts to a Covenant, and an Action well lies upon it. 1 *Lev.* 155. *Vide* 1 *Co.* 155. 1 *Roll. Abr.* 518. *Mo.* 478.

A Man's Agreement to pay, if Party to a Deed, amounts to a Covenant.

54. **Where a Man is Party to a Deed, his Agreement to pay amounts to a Covenant, tho' the formal Words of Covenant, Grant,** &c. **were wanting.** 2 Mod. Rep. 269. **For the Law hath not appropriated any ſet Form of Words as abſolutely neceſſary for the Creating a Covenant.** 1 Chan. Caſes 294. 1 Leon. 324. 1 Roll. Abr. 518. 1 Brownl. 23. vide 1 Lev. 274. Raym. 183. 1 Sand. 319. Antea 5, 37, 41.

If the Law creates a Duty or Charge, and the Party is diſabled to perform without his Default, the Law will excuſe him. But if by Covenant he makes a Duty, he muſt perform it.

55. **Where the Law creates a Duty or Charge, and the Party is diſabled to perform it without any Default in him, and hath no Remedy over, there the Law will excuſe him: But when the Party by his own Covenant creates a Duty or Charge upon himſelf, he is bound to make it good.** Paradine *and* Jane, Aleyn 27. Antea 34.

Condition to perform Covenants, and to ſave harmleſs, muſt ſet forth the Deed in a Plea, and not plead Performance generally.

56. **In a Condition to perform Covenants in an Indenture, and alſo to bear harmleſs, the Defendant ought to ſet forth the Deed, and not to plead Performance generally; becauſe ſome of the Covenants might be in the Negative, and alſo he muſt ſhew how he ſaved harmleſs.** Aleyn 72. Carth. 4, 5. 1 Ven. 37. 1 Sid. 50. 1 Mod. 266. vide Co. Litt. 303. b. Mod. 856. Lucas 329. Cr. Eliz. 691. Palm. 70. Mo. 850. Godb. 212. Hob. 12, 13. 1 Sid. 87. Cr. Eliz. 232. 1 Leon. 311. Style 63. **But I conceive, that** Non

dampnificatus had been a good Plea, as to the ſaving harmleſs. 2 Co. 4. a. Cr. Ja. 363. March 121. 1 Leon. 71. 3 Mod. 252. March 121. 2 Mod. 305. Kelw. 80. Cr. Eliz. 216, 433, 477. Cr. Ja. 165, 503.

Whether Payment of Legacies is a good Payment on *Plene adminiſtravit* in Covenant, before Covenants broke.

57. Whether the Payment of Legacies was a good Payment, upon Plene adminiſtravit pleaded in Covenant before Covenants broken, was a Point well argued in Aleyn 38, 39. And a Diverſity was taken between Debts without Specialty and Legacies; for Debts without Specialty are of the ſame Nature as Debts upon Specialty, but differ only in Order and Dignity: But Legacies are mere Gratuities. Ibid.

Leaſe ſealed by Leſſor, and not by Leſſee, yet Covenant will lie againſt Leſſor.

58. If a Leaſe is ſealed by the Leſſor, and the Leſſee hath not ſealed the Counterpart, Covenant lies upon the Leaſe againſt the Leſſor, upon a Breach of Covenant, although the Plaintiff the Leſſee hath not ſealed a Counterpart. Owen Rep. 100. Cro. Eliz. 212. pl. 4. 1 Leon. Caſe 458. Vaugh. 127. Antea 3.

Where an Act is to be done by a Stranger to the Condition, which is for the Obligor's Benefit, and the Performance ſaves his Bond, he muſt get it performed at his Peril.

59. When an Act is to be done by a Stranger to the Condition of a Bond, and the Condition is for the Benefit of the Obligor, and the Performance of this ſaves his Bond, he hath taken upon him to perform it at his Peril; and therefore he ought to procure the Stranger to do the Act. 5 Rep. 23. b. 2 Sid. 107. 1 Roll. Abr. 452. Hutt. 48. Winch 30. 3 Bulſt. 30. 2 Ed. 4. 2. 39 Hen. 6. 10. b. Co. Litt. 209. 1 Sand. 215.

An illiterate Man is not bound to ſeal any Writing, if none preſent to read it to him.

If in other Language muſt expound it to him.

60. Where a Man (minime Literatus) is to do an Act, he is not bound to ſeal any Writing that ſhall be tendred to him, if there is not ſome Body preſent who can read the ſame to him, if he requires it. And if it is Latin, French, &c. then ſome Body who can read and expound it to him. (a) 2 Rep. 3. a. 9.

A Grant for 99 Years in Conſideration of 400*l*. Proviſo, if he pay 20*l*. *per Annum*, &c. the Grant to be void. It is no expreſs Covenant.

61. In Conſideration of 400 l. the Defendant granted Lands to the Plaintiff for 99 Years, if B. ſo long lived, provided (b) if he pay 20 l. per Annum Quarterly, during the Life of B. or within two Years after his Death, pays the Plaintiff 100 l. then the Indenture to be void. The Court inclined that an Action of Covenant would not lie, becauſe it was a Proviſo and no expreſs Covenant, and therefore no Breach can

(a) But where a Man is bound upon a Requeſt to him to ſeal an Indenture, this is peremptory at his Peril; and he cannot have convenient Time to conſult his Counſel. 2 *R.* 3. *b.* *Dy.* 337, 338. *pl.* 39.

(b) Had it been, *And it is agreed that*, &c. an Action of Covenant would have lain. *Vide ante.*

can be aſſigned. 2 Mod. Rep. 37. Cr. Jac. 281. Yelv. 206. 1 Brownl. 113. Bulſt. 156.

Where a Condition is of two Parts disjunctively, both poſſible, and after one becomes impoſſible by the Act of God, the Obligor is not bound to perform the other.

62. Where a Condition of a Bond conſiſts of two Parts in the Disjunctive, and both are poſſible at the Time of the Bond made, and afterwards one becomes impoſſible by the Act of God, the Obligor is not bound to perform the other Part: For the Condition is for the Benefit of the Obligor, and ſhall be taken moſt beneficially for him; and he hath his Election to perform either the one or the other, for the ſaving of the Penalty of his Bond. And when one Part is become impoſſible by the Act of God, it is as beneficial to him, as if this Part of the Disjunctive, which is become *impoſſible*, had been only the Condition of the Bond. 5 Rep. 22. a. Poph. 98. Moor 357. Cr. Eliz. 398. See Salk. 170.

Where a Man may bring Debt or Covenant, at his Election.

63. A Man covenants to pay 20 l. at a Day; though he may have an Action of Debt for the 20 l. * yet he may have an Action of Covenant at his Election. 1 Roll. Abr. 578. pl. 3. 517, 518. Brownl. 19.

Articles that one ſhall have a Way, amount to a Grant of the Way.

64. Articles whereby the Defendant conceſſit & agreavit with the Plaintiff, his Heirs and Aſſigns, quod licitum foret illis, at all Times to have a Way over the Defendant's Cloſe, and in Conderation thereof the Plaintiff promiſed to pay the Defendant, his Heirs and Aſſigns, 6 d. per Ann. This is a good Grant of the Way, † and doth not amount to a Covenant only. 3 Lev. 305.

The Words *Yielding and Paying* make an expreſs Covenant, and why.

65. The Words Yielding and Paying make an expreſs Covenant in Law only. Style 406, 407, 431. 2 Brownl. 215. 1 Sid. 266, 401. 2 Mod. 92. 1 Vent. 10. 2 Jones 102. 3 Lev. 155. And if a Man leaſes for Years, rendring a Rent, an Action of Covenant lies for Non-payment of the Rent; for the Reddendo of the Rent is an Agreement for the Payment of the Rent, which will make a Covenant. 1 Roll. Abr. 519. pl. 10. C. J. Jones 103. Style 387. Carth. 135.

Covenant or Warranty lies according as the Eviction is.

66. If a Man conveys Land to another in Fee, with Warranty, and after the Land is evicted by Eigne Title for certain Years, the Grantee of the Land may bring Covenant upon the ſaid Words againſt the Grantor on this Eviction, although the Warranty be annexed to the Freehold; for the ſaid Words make a Covenant if a Chattel be evicted, and

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* Debt lies upon any Covenant where the Sum is reducible to a Certainty. 2 *Keb.* 225. *pl.* 80. *Style* 31, 133. 2 *Jones* 184.

† It is a Rule, That the Word *Covenant* will make a Leaſe, though the Word *Grant* be omitted. 2 *Mod.* 80. 1 *Roll. Abr.* 848. *Cr. Ja.* 172. 3 *Bacon Abr.* 419. Nay, a Licenſe to hold the Land for a Time, will amount to a Leaſe. *Ibid.*

a Warranty if a Freehold be demanded. * Rudge and Pincomb, 1 Roll. Rep. 25, 36.

*That the Leſſee ſhall repair*, make a Covenant.

67. The Words in a Leaſe for Years, That the Leſſee ſhall repair, make a Covenant. 1 Rol. Abr. 518. Cr. Ja. 399, 521. 3 Bulſt. 163. 1 Roll. Rep. 359. 2 Rol. Rep. 63.

Where Covenant lies upon a Recital in a Deed.

68. If I recite by my Deed, That I am poſſeſſed of ſuch an Intereſt in certain Lands, and aſſign it over by the ſame Deed, and thereby covenant to perform all covenants in the Deed, if I be not poſſeſſed of ſuch Intereſt, the Covenant is broken. 1 Leon. Caſe 264.

A Covenant in Law ſhall go to the Aſſignee of the Term.

69. If a Man leaſes Lands by Indenture, the Covenant in Law created by the Word Demiſe ſhall go to the Aſſignee of the Term, who ſhall have the Advantage of it. 1 Rol. Abr. 521. Letter I. 1. Dyer 257. 4 Co. 80. 5 Co. 17.

An Aſſignee of a Grant of Lands may bring Covenant for further Aſſurance.

70. A. conveys Land to B. and covenants with B. and his Aſſigns, to make further Aſſurance upon Requeſt; B. conveys to C. who conveys to D. and D. requires A. to make a further Aſſurance, and he refuſes; D. ſhall have an Action of Covenant againſt him as Aſſignee, upon his Refuſal. 1 Roll. Abr. 521. Letter K. pl. 6. Cr. Ja. 503, 505. 1 Jones 406.

Covenant lies againſt a Leſſee after Aſſignment, and Acceptance of Rent of Aſſignee.

71. A Man leaſes for Years rendring Rent, the Leſſee covenants for him, and his Aſſigns, to repair the Houſe during the Term; and after the Leſſee aſſigns over, and the Leſſor accepts the Rent of the Aſſignee, and afterwards the Covenant is broken: Although the Leſſor accepts the Rent of the Aſſignee, yet an Action lies againſt the firſt Leſſee, becauſe he hath expreſly covenanted for him and his Aſſigns; and this perſonal Covenant cannot be transferred by the Acceptrnce of the Rent. 1 Rol. Abr. 522. Bro. Covenant, 32. 1 Jones 223. Cr. Ja. 523. So alſo an Action of Covenant lies for the Rent. Ibid. † 1 Brownl. 20. Fiſher and Amery.

Where a negative Covenant can be ſaid to be performed.

72. A negative covenant is not ſaid to be performed, until it becomes impoſſible to be broken. 2 Saund. 156. at the Bottom.

Letters Patent ſhall be taken for a Covenant as well as if it were an Indenture.

73. Words in Letters Patent § ſhall be taken for a Covenant, without expreſs Words of Covenant; for he who takes by the Letters Patent ſhall be bound, as

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* A Man makes a Leaſe for Years, and warrants it to the Leſſee, his Heirs and Aſſigns; though this be no Warranty, yet it is a good Covenant in Law. Br. Tit. *Covenants*, 38. 1 *Keb.* 821. *Hob.* 4. *Yel.* 139. *Noy* 131.

† But an Action of Debt will not lie in this Caſe.

§ *Note*; The Letters Patent are made by the King only, and the Grantee is no Party to them, but takes an Eſtate by them; and therefore ſhall be bound by them.

well as it it were by Indenture. 3 Bulſtrode 163. Cr. Ja. 240. 1 Bulſt. 21. Cr. Ja. 399, 521. 1 Roll. Rep. 359. 2 Roll. Rep. 63. Poph. 136.

Upon a Grant of a Reverſion to Baron and Feme, the Baron only may bring Covenant.

It is a Rule, that the Baron only may bring the Action for that which he can diſcharge without his Wife.

74. The Reverſion of an Eſtate in Fee came to Baron and Feme by Patent; the Baron only brings Covenant for Breach of Covenants upon this Patent: And it was adjudged, That he may bring it alone without his Wife: For it is a Rule, That for the Recovery of that which the Baron may diſcharge alone, and of which he may make Diſpoſition to his own Uſe, he may well bring the Action without his Feme. 3 Bulſtr. 164.

The Difference between a Covenant created by Law and an expreſs Covenant.

75. Where the Covenant is created by Law, the Covenantee cannot bring Covenant, if he be not ouſted by one who hath a Title; but otherwiſe it is in caſe of an expreſs Covenant. 2 Brownl. 161, 162.

# Covenants to levy a Fine.

A Covenant to levy a Fine.

AND the ſaid T. P. for himſelf, his Heirs, Executors and Adminiſtrators, doth covenant, promiſe, grant and agree, to and with the ſaid J. L. and A. P. their Heirs, Executors and Adminiſtrators, and every of them, by theſe Preſents, That the ſaid T. P. and Dame E. his Wife, * ſhall and will, at the proper Coſts and Charges in the Law of him the ſaid T. P. before the End of the Term of St. Michael † next enſuing, in due Form of Law, acknowledge and levy before the King's Majeſty's Juſtices of the Court of Common Bench at Weſtminſter, unto the ſaid J. L. and A. P. and their Heirs, (or to them, and the Heirs of one of them,) one Fine (a) (ſur conuſans de droit come ceo) on Acknowledgment of the Right, as it is, and ſo forth, with Proclamations, according to the Form of the Statute in that Caſe made and provided, of and in all that Manor and Lordſhip of W. with the Rights, Members and Appurtenances in the ſaid County of G. and of all that capital Meſſuage, with the Appurtenances in G. aforeſaid, together with all Out-houſes, Barns, Buildings,

Refuſal to acknowledge a Fine on a *Dedimus* ſued out, is a Breach of Covenant.

1. (a) Upon a Covenant to acknowledge and execute a Fine it is enough, to ſhew a *Dedimus* ſued out, and that the Defendant upon Requeſt refuſed to levy it; without ſhewing that a Writ of Covenant was ſued out; for that the *Dedimus* may be ſued out before the Writ of Covenant. *Latch* 186.

Refuſal to acknowledge the Fine before a Judge at the Aſſizes, is a Breach.

2. Alſo the Refuſing to acknowledge a Note for a Fine before the Juſtices at the Aſſizes is a Breach, although

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* Where the Covenant is, That *J. S.* a Stanger ſhall levy a Fine to the Covenantee, the Covenantee is bound to ſue out a Writ of Covenant, *viz.* to do the firſt Act: *Aliter*, if I covenant with you, that *J. S.* ſhall levy a Fine to *J. N.* there I muſt do it at my Peril: But it is no Reaſon to compel the Obligor, who is a Stranger to the Eſtate which paſſeth by the Fine, to ſue out a Writ of Covenant. *Winch* 29, 30: *Hutt.* 48.

† The beſt Way is to put it a further Term, as to ſay, *Before the End of the Term of St.* Hillary, which is the ſame as if it were levied in either of thoſe Terms.

ings, Stables, Gardens, Orchards and demeſne Lands, and other Lands, Tenements, Meadows, Paſtures, Woods, Rents and Hereditaments, unto the ſaid Manor and Capital Meſſuage, or to either of them belonging or any wiſe appertaining, or therewith uſed or enjoyed, or accepted, reputed or taken to be Part, Parcel or Member of them, (by the Name of the Manor of B. &c.) (ſo put in all the Particulars,) or by ſuch apt and convenient Quantities and Qualities, and Numbers of Meſſuages and Acres, and other Deſcriptions, as by the ſaid J. L. or A. P. or their Counſel learned in the Law, ſhall be reaſonably deviſed or adviſed; which ſaid Fine ſo to be levied as aforeſaid, and all and every other Fine heretofore had, made, levied or acknowledged, or hereafter to be had, made, levied or acknowledged, of or upon the ſaid Manor, Meſſuages, Lands, and Premiſſes, or any Part thereof, by or between the ſaid Parties to theſe Preſents, or whereunto they or any of them are or ſhall be Party or Parties, ſhall enure and be, and all the ſaid Parties to theſe Preſents do hereby declare and agree, that the ſame ſhall be and enure, and ſhall be conſtrued, expounded, adjudged, deemed and taken to be and enure to the ſe-

though no Writ of Covenant is ſued out; becauſe this is a preparatory Act, whereupon a Writ of Covenant may afterwards be ſued out. *Moor*, *fo.* 810, 811. *Caſe* 1096.

3. If a Man covenants to be ready to levy a Fine by ſuch a Day, the other ought before the Day to bring a Writ of Covenant againſt him: But as to this the Law is altered; for Fines are now levied and Writs of Covenant ſued out afterwards. *Noy* 199. 1 *Bulſt.* 90, 91. Vide *Lucas* 43. where the Court ſaid, Tho' a Fine preſuppoſes a Writ of Covenant, yet now the Practice is to levy Fines without.

A Covenantor is not bound to levy a Fine, in which are more Houſes or Lands than in the Covenant.

4. Where there is a Covenant to levy a Fine, and the Plaintiff tenders a Fine with more Houſes or Lands in it than are in the Covenant, the Defendant is not bound to levy it. 1 *Roll. Rep.* 117, 118. *Vide Cro. Jac.* 251. *pl.* 4. and 1 *Bulſt.* 90. *contra*; and that what is more than is in the Covenant ſhall be to the Uſe of him who levies the Fine, and his Heirs.

Where the Words declare a Fine ſhall be levied, Covenant will lie.

5. When the Words do declare the Intent of the Parties, that a Fine ſhall be levied; it is ſuch an Agreement, as an Action of Covenant will lie. 2 *Mod. Rep.* 92.

Chancery will decree a Fine to be levied on the Words, *I do intend to levy a Fine to ſecure* 500 l.

6. And where the Words are, *I do intend to levy a Fine for the ſecuring of* 500 l. Chancery will upon theſe Words decree the Fine to be levied. 2 *Mod. Rep.* 91.

**beral Uſes, Behoofs, Intents and Purpoſes hereafter in and by theſe Preſents declared, mentioned, limited and expreſſed, and to and for no other Uſe, Intent or Purpoſe whatſoever; That is to ſay, to the Uſe and Behoof of,** &c. [Here put in the Uſes.]

7. Although Indentures are made for the declaring of the Uſes of a ſubſequent Fine or Recovery to a certain Perſon, and within a certain Time, and to certain Uſes, they are but directory, and bind not the Eſtate or Intereſt in the Land. Yet if the Fine, Recovery, *&c.* is purſued according to the Indentures, there cannot be any nude Averment againſt the Indentures taken, *viz.* to ſay, That after the Indentures and before the Aſſurance it was agreed, That the Aſſurance ſhould be to other Uſes: But if another Agreement or Limitation of Uſes be made by Matter of as high Nature, then the laſt Agreement ſhall ſtand. Alſo it ſhall be miſchievous, that the Matter in Writing done by good Advice, ſhall be controlled by nude Averments, to be proved by the incertain Teſtimony of ſlippery Memory. 5 *Rep.* 27. *a.*

Indentures declaring the Uſes of a ſubſequent Fine or Recovery, are but directory, and bind not the Eſtate.

But if the Fine and Recovery purſue the Indenture, there can be no Averment taken againſt the Indenture; that after it was agreed, the Fine, *&c.* to be to other Uſes, unleſs the Uſes are limited by a Matter of as high a Nature.

8. But where the Form of the Indentures is not purſued, as to the Quantity of the Land, or the Time wherein, *&c.* there an Averment without Writing may be taken, that the Fine, *&c.* was to another Uſe. Though if the Indentures are not purſuant in Circumſtance of Time, Quantity, Perſon, *&c.* if there is no other new mean Agreement, the Aſſurance ſhall be in Judgment of Law to the Uſes in the Indentures. 5 *Rep.* 27. *a.*

But if the Indentures are not purſued, as to the Quantity of the Land, *&c.* an Averment to other Uſes, without writing, may be taken.

10. A Man and his Wife covenanted to levy a Fine before the End of *Hillary* Term next enſuing, * and the Deed bore Date within the *Hillary* Term, (but was intended to be dated before) and upon a ſpecial Verdict it was adjudged, That the Fine was not levied to the Uſes in the Deed. For that the Deed was to lead the Uſes of a Fine to be levied in the next *Hillary* Term then following, and it was levied in the ſame Term wherein the Deed was executed. *Jones* and *Morley*, in *B. R.* This was afterwards brought in the Houſe of Lords by Writ of Error, and this Judgment, given in the Court of King's Bench, was there affirmed but by one Voice. *Vide Shower's Parl. Rep.* 140.

* And accordingly a Fine was levied before the End of the *Hillary* Term wherein the Deed bore Date.

Covenant upon a Marriage to levy a Fine to Uſes, and no Fine levied, no Uſe ſhall ariſe. 3 *Lev.* 206.

By the Statute of the 29 *Car.* 2. *cap.* 3. *ſect.* 7. all Declarations of Truſts or Confidences of any Lands, Tenements, or Herditaments, ſhall be manifeſted and proved by ſome Writing ſigned by the Party who is by Law enabled to de-

Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. §. 7. That all Declarations of Truſts ſhall be proved by ſome Writing, or by Will, or elſe to be void.

clare ſuch Truſt, or by his Will in Writing, or ſhall be void and of none Effect.

*Sect.* 8. Reſulting Truſts, or Truſts by Implication or Conſtruction of Law, ſhall be as if this Act had not been made.

Provided, That where any Conveyance ſhall be made of any Lands Tenements or Hereditaments, by which ſuch Truſt or Confidence may ariſe or reſult by Implication or Conſtruction of Law, or be transferred or extinguiſhed by an Act or Operation of Law; then ſuch Truſt or Confidence ſhall be of the like Force and Effect, as the ſame would have been, if this Act had not been made: Then comes the Statute of the 4th and 5th of Queen *Anne*, and ſays,

4 & 5 *Anne*, *For the Amendment of the Law*, Reciting that it was doubted, ſince the making of 29 *Car.* 2. *cap.* 3. Whether Declarations of Uſes and Truſts of Fines or Recoveries manifeſted by Deed, after the levying or ſuffering of ſuch Fines or Recoveries, were good in Law; it is thereby declared, that they are good in Law.

That whereas it hath been doubted, Whether ſince the making of the ſaid Act of 29 *Car.* 2. *cap.* 3. That the Declarations or Creations of Uſes, Truſts and Confidences, of any Fines or Recoveries manifeſted by Deed, made after the levying or ſuffering of ſuch Fines or Recoveries, are good in Law; it is thereby declared, That all Declarations of Uſes, Truſts or Confidences, of any Fines or Common Recoveries of any Lands, Tenements or Hereditaments, manifeſted and proved by any Deed already made, or hereafter to be made, by the Party who is enabled by Law to declare ſuch Uſes or Truſts, after the levying or ſuffering of any ſuch Fines or Recoveries, are and ſhall be as good and effectual in the Law, as if the ſaid Act of Frauds and Perjuries, 29 *Car.* 2. *cap.* 3. had not been made.

# Covenants to ſuffer a Recovery.

A Recovery with treble Voucher by Leaſe and Releaſe.

IN a Leaſe and Releaſe, where the Releaſe is to B. H. his Heirs and Aſſigns, to the only Uſe and Behoof of the ſaid B. H. his Heirs and Aſſigns, for ever, to the Intent and Purpoſe the ſaid B. H. may become, and be made a good and perfect Tenant of the Freehold thereof: (a) And that a good and perfect Common Recovery may be had and ſuffered of the ſame, to the ſeveral Uſes hereafter mentioned; and to that End and Purpoſe it is hereby further granted, concluded and agreed by and between all and every the ſaid Parties to theſe Preſents, That the ſaid J. R. ſhall before the End of Michaelmas Term next enſuing the Date of theſe Preſents * ſue forth and proſecute one or more Writ or Writs of Entry Sur Diſſeiſin en le poſt, returnable before the Juſtices of his Majeſty's Court of Common Pleas at Weſtminſter in the County of Middleſex againſt him the ſaid B. H. and there demand againſt him the ſaid B. H. all and ſingular the ſaid Meſſuages, &c. * with their and every of their Appurtenances, by the Name of † . . . . . or by ſuch other Name, Names, Quantities, and Deſcripti-

ons,

(a) *Note*; If there be any Tenant in Poſſeſſion that hath a Freehold in the Lands, the Perſon who hath the Freehold, muſt ſurrender it, or elſe convey it to the Perſon who is to be the Tenant to the *Præcipe*; ſo that ſuch Tenant, at the Time of the bringing of the Writ of Entry, may have the ſole Freehold in him; which if he have not, the Writ of Entry will not lie againſt him, and then the whole Recovery thereupon will be void.

There muſt be a Tenant to the *Præcipe* of the Sole Freehold, or the Recovery will be void.

* Or any other Term.

* Put in all the Particulars.

† Put them in here alſo.

ons, as by the ſaid J. R. or his Counſel ſhall be adviſed or thought fit, unto which ſaid Writ or Writs the ſaid B. H. ſhall appear gratis, and in his proper Perſon ſhall vouch to warrant, with treble Vouchers, the Premiſſes, the ſaid Sir J. S. which ſaid Sir J. S. ſhall alſo appear gratis in his proper Perſon, and enter into Warranty, and vouch over to warrant the Premiſſes to the ſaid H. S. which ſaid H. S. ſhall likewiſe appear gratis in his proper Perſon, and enter into Warranty, and ſhall vouch over to warrant the Premiſſes, the common Voucher, who ſhall likewiſe appear and enter into Warranty, and after Appearance and Entry into Warranty, and Imparlance being had, ſhall make Default, and depart in Contempt of the Court, and all other Things ſhall be had and done therein, to the End that a good, perfect, Common Recovery may in all Things be had and proſecuted, of all and ſingular the Premiſſes with the Appurtenances, according to the uſual Courſe and Form of Recoveries in that Court uſed, for cutting off of Intails and Aſſurance of Lands. (b) And it is hereby granted, concluded and declared, by and between all and every the ſaid Parties to theſe Preſents, And the ſaid Sir J. S. and H. S. do by theſe Preſents conclude, agree and declare, that the ſaid Recovery ſo as aforeſaid, or in any other Manner or Form had, or to be had, of the Premiſſes, or any Part thereof, by and between the ſaid Parties to theſe Preſents, and the Force and Execution of the ſame; And the ſaid Recoveror and his Heirs, immediately from and after the executing and perfecting the ſaid Recovery, and all and every Perſon and Perſons, which then ſhall ſtand and be ſeized of the Premiſſes, and of every or any Part thereof, with the Appurtenances, by Virtue of the ſaid Recovery, ſhall ſtand and be ſeized of all and ſingular the ſaid Meſſuages, &c. with the Appurtenances, to the ſeveral Uſes, Intents and Purpoſes hereafter mentioned; that is

The Declaration of the Uſes of the Recovery, to Sir *J. S.* for Life, and after to *H. S.* and his Heirs for ever.

Recoveries by Tenants for Life, *&c.* by *Covin* are void, and Forfeitures.

(b) If Tenant for Life ſuffers a Recovery by Agreement between him and the Recoveror, it is a Forfeiture of his Eſtate, and he in the Reverſion may enter; and all Recoveries had by *Covin* againſt Tenant in Tail after Poſſibility of Iſſue extinct, Tenants by the Curteſy, or for Life, *&c.* ſhall be void againſt them in Remainder or Reverſion, and their Heirs. Statute 14 *Eliz.* *c.* 8.

But not where Tenant in Tail is vouched.

But this Statute relates only to Recoveries by Agreement and Covin; and it was never the Intent of the Act to extend to ſuch a Recovery in which a Tenant in Tail was vouch'd to Warranty. 1 *Rep.* 15.

to ſay, To the only proper Uſe and Behoof of the ſaid Sir J. S. and his Aſſigns, for and during the Term of his natural Life, without any Impeachment, of or for any manner of Waſte, and with full Power to do Waſte; and immediately from and after his Deceaſe, to the only Uſe and Behoof of the ſaid H. S. and his Heirs and Aſſigns for ever, and to and for no other Uſe, Intent or Purpoſe whatſoever.

Stat. 4 & 5 *Annæ*, *c.* 16. Enacts, That Declarations of Uſes of Fines or Recoveries, manifeſted by Deed, after the levying or ſuffering of ſuch Fines or Recoveries, ſhall be good in Law.

The Statute of the 4 & 5 Annæ, cap. 16. Enacts, That all Declarations or Creations of Uſes, Truſts or Confidences of any Fines or common Recoveries of any Lands, Tenements or Hereditaments, manifeſted and proved, or which hereafter ſhall be manifeſted and proved by any Deed already made, or hereafter to be made, by the Party who is by Law enabled to declare ſuch Uſes or Truſts, after the levying or ſuffering of any ſuch Fines or Recoveries, are and ſhall be as good and effectual in the Law, as if the Act of 29 Car. 2. cap. 2. of Frauds and Prejuries had not been made.

Deed and Recovery make but one Conveyance.

A Deed to ſuffer a Recovery, and the Recovery make but one Aſſurance; and nothing veſts till the Recovery is ſuffered. 1 Mod. 251.

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A Co-

# A Covenant that he is ſeized of a good Eſtate in Fee-ſimple, and that it is free from Incumbrances.

A Covenant that the Covenantor is ſeized in Fee free from Incumbrances.

AND the ſaid Sir W. L. doth for himſelf, his Heirs, Executors and Adminiſtrators, Covenant, Promiſe and Grant, to and with the ſaid H. G. his Heirs, Executors and Adminiſtrators, by theſe Preſents, That he ſaid Sir W. L. at the Time of the making, ſealing and delivering of theſe Preſents, is and ſtandeth lawfully ſeized of and in the ſaid Manor or Lordſhip of H. together with all the Meſſuages, Lands, Tenements, Meadows, Paſtures, Feedings, Woods, Underwoods, Hereditaments and Premiſſes whatſoever before mentioned, with all and ſingular their and every of their Appurtenances, of a good, ſole, perfect and abſolute Eſtate in Fee-Simple, in his own Right, not ſubject or liable to any Condition or Conditions, Uſe or Uſes whatſoever, whereby to change, alter, defeat or diſannul

That he is ſeized in Fee, and has good Right to ſell, are ſynonymous.

1. A Covenant that he was ſeized in Fee, and had good Right to ſell, are ſynonymous. 3 *Lev.* 46. Where he had nothing, this is a Breach of Covenant. 2 *Bulſt.* 12. 2 *Jones* 195.

That he was ſeized in Fee, notwithſtanding any Act done, *&c.*

1 *Sid.* 323.

2. A Covenant, that at the Time of the Date of the ſaid Indenture he was ſeized of a lawful Eſtate in Fee-ſimple, notwithſtanding any Act done by him or his Anceſtors: And that the Land was then of the Value of 200 *l. per Annum.* And that the Plaintiff and his Heirs ſhall enjoy the ſame, according to the ſaid Limitations, diſcharged and ſaved harmleſs from all Incumbrances made by him or them.

That the Lands are of 200 *l. per Annum.*

That he ſhall enjoy freed from all Incumbrances.

The Queſtion was, Whether this Covenant for the yearly Value depends on the firſt Part of the Covenant, (that notwithſtanding any Act made by him, *&c.*) or whether it was an abſolute and diſtinct Covenant? And held to be an abſolute and

Notwithſtanding any Act done by him, how to be conſtrued.

That the Lands ſhall continue to the ſeveral Uſes.

Freely and clearly acquitted, &c.

annul the ſame; and that the ſaid Manor or Lordſhip, Hereditaments and Premiſſes, with all and ſingular their and every their Appurtenances whatſoever before mentioned, now are of the clear yearly Value of 100 l. And ſhall from Time to Time, and at all Times for ever hereafter, continue, remain, and be to the ſeveral Uſes, in and by theſe Preſents mentioned, declared, limited and directed as aforeſaid, freely and clearly acquitted, exonerated and diſcharged, of and from all and all manner of former Bargains, Sales, Feoffments, Grants, Mortgages, Entails, Wills, Judgments, Executions, Extents, Debts, or Duties upon Record, Statutes Merchant and of the Staple, Titles, Charges, Rents, Annuities and Incumbrances whatſoever, heretofore had, made, ſuffered, acknowledged or done by the ſaid Sir W. L. or by any other Perſon or Perſons whatſoever, any Thing having or claiming, in, to or out of the Premiſſes, or any Part or Parcel of the ſame whatſoever, with all and ſingular their and every the Appurtenances, by, from or under him the ſaid Sir W. L. or by his, their, or any of their Means, Conſents, Privities or Procurements.

and diſtinct Covenant without any Dependance upon the firſt Part of the Covenant. *Cro. Car.* 106, 107. *pl.* 8. See *Litt. Rep.* 62 to 69. and 203.

A Covenant to the yearly Value of the Land.

3. A Covenant that the Lands conveyed are of the yearly Value of 100 *l.* and ſhall ſo continue * notwithſtanding any Act done, or to be done by him: In an Action upon this Covenant the Breach aſſigned was, that the Lands were not of the yearly Value of 100 *l.* Adjudged, That the Words *Notwithſtanding any Act*, &c. extend as well to the Time of the Covenant, as to the future Time; and tho' they were not then * of that Value, the Covenant was not broken, unleſs ſome Act was done by him, which was the Cauſe thereof. *Cro. El.* 43, 44. *pl.* 4. See *Litt. Rep.* 80, 81.

* Had the Word *Now* been in, and the Words *Notwithſtanding any Act done, or to be done*, had been left out, then the Action would have held.

* At the bringing of the Action.

Notwithſtanding any Act done, &c.

To convey in Fee, the Party ought to ſhew what Conveyance he would have.

4. In a Covenant to convey in Fee-ſimple the Plaintiff muſt ſhew what Conveyances he would have, or elſe it is naught. *Latch* 120.

That he is ſeized in Fee, and hath good Right to ſell, and that there is no Reverſion in the Crown,

5. A Man covenants, that he is ſeized of a good, perfect, and indefeaſible Eſtate in Fee-ſimple, and that he hath good Right and lawful Authority to ſell, and that there is not any Reverſion or Remainder in the Crown, for any Act done by the Defendant: The Plaintiff aſſigns a Breach,

For any Act done by him.

Breach, that he was not ſeized of a good Eſtate in Fee-ſimple; Whether theſe Words (*By any Act done by him*) at the End of the Covenant, ſhall refer to all before, or only to this laſt Part? *Vide* the Reſolution. *Litt. Rep.* 62 to 69, and 203. that it ſhall not refer to all before; and adjudg'd that the Action well lay, 203.

A Breach that he was not ſeized in Fee.

How far any Act done by him ſhall refer.

6. *A.* ſeized of two Farms, out of which a Fee-Farm Rent of 10 *l. per Annum* iſſues, he grants one of the Farms to *B.* and covenants, that it ſhould be diſcharged of the Rent, and dies; the other Farm deſcends to his Heir; the Grantee would have this to be a real Covenant, which ſhould run with the Land, and charge the other Land with the whole Rent. *Curia:* This is only a perſonal Covenant, and cannot charge the Heir, but only in reſpect of Aſſets. *Hardr.* 87.

Where a Covenant is a real Covenant, it runs with the Land, and binds the Heir; not where it is perſonal.

7. Debt upon a Bond to perform Covenants, ſome of which were that the Indenture and Leaſe, at the Time of the Aſſignment, is a good, true, and indefeaſible Leaſe, and that the Plaintiff ſhall enjoy, *&c.* without the Let or Interruption of the Defendant, or any claiming (by, from, or under him) and ſhews for Breach, that the Leſſor had no Right to make the Leaſe: The Defendant demurs: The Queſtion was, Whether (indefeaſible Leaſe, *&c.*) ſhall be conſtrued as a diſtinct Sentence, or with Reference to the laſt Words (without the Interruption of the Defendant?) And the Court thought that the laſt Words did not qualify, or mitigate the firſt Words, for that they are diſtinct Clauſes. *Vide* 1 *Sid.* 328. I do not find that it was adjudged. See *Cro. Car.* 106, 107. *pl.* 8. *Litt. Rep.* 203.

That the Indenture of Leaſe at the Time of the Aſſignment is a good Leaſe, and the Plaintiff ſhall enjoy without the Let of the Defendant, or any claiming under him.

Breach, that the Leſſor had no right to make the Leaſe.

How to be conſtrued.

8. *A.* covenants to execute by ſuch a Time an Eſtate of ſuch Lands as ſhould deſcend to him from his Father, the ſame to be of the clear yearly Value of 40 *l.* The Queſtion was, If the Party hath more Lands then 40 *l. per Annum* deſcended, whether he was to make a Conveyance of all, or only of ſo much as amounted to 40 *l. per Annum? Manwood*, Juſtice, thought that he ſhould aſſure no more than to the Value of 40 *l. per Annum*; for that the Word *Such*, doth not go ſo largely, as if he had ſaid, (All my Lands which ſhall deſcend and come, *&c.*) 3 *Leon.* 27.

A Covenant to convey ſuch Lands as deſcended from his Father, the ſame to be of 40 *l. per Annum.*

But doth not ſay all Lands.

How it ſhall be.

9. *A.* ſells Lands to *B.* the Plaintiff's Teſtator, and covenants with him, his Heirs and Aſſigns, that he ſhall enjoy againſt him (the Covenantor) his Heirs and Aſſigns, and *C. D.* and all claiming under them; and a Breach aſſigned in an Ejection, by one claiming under *C. D.* The Defendant pleads, That at the Time of the Covenant he was ſeized of an indefeaſible Eſtate, which was afterwards defeated by Act of Parliament; the Defendant's Plea adjudg'd, upon a Demurrer, to be naught. See the Caſe, 2 *Lev.* 26. 2 *Vent.* 175. 2 *Keb.* 831. *Vide* 1 *Salk.* 198. The ſeveral Diverſities

How it is where a good Eſtate in Fee at the Time of the Covenant, is afterwards defeated by Act of Parliament.

where Covenants are repealed or extinguiſhed by Act of Parliament.

A Covenant was with the Teſtator, his Heirs and Aſſigns; and the Eviction being of the Teſtator, his Executor (tho' not named) brings the Action; and good: For the Eviction being of the Teſtator, he cannot have Heir or Aſſign of this Land; but the Damages ſhall be recovered by the Executors, altho' they are not named in the Covenant; for they repreſent the Perſon of the Teſtator. 2 *Leon.* 26. 1 *Vent.* 175.

Covenant with the Teſtator, his Heirs and Aſſigns, the Executor (tho' not named) may bring Covenant.

Leſſee covenants with the Leſſor, his Executors and Adminiſtrators, to repair: This ſhall run with the Land, and the Heir ſhall bring Covenant, and not the Executor. 2 *Lev.* 92. *Skin.* 305. *Lucas* 158.

Leſſee covenants with the Leſſor, his Executors and Adminiſtrators, to repair: This runs with the Land, and the Heir, and not the Executor, ſhall bring the Action.

In Covenant by an Aſſignee againſt an Aſſignee: The Breach aſſigned was, that a Stranger, *habens jus & Titulum*, entered, and doth not ſay, what Title; this is naught. 3 *Mod.* 135.

Covenant by an Aſſignee againſt an Aſſignee; Breach, that a Stranger *habens jus* enter'd; but ſays not what Right

A Covenant that he is ſeized in Fee, according to the Indentures made to him by one *W.* And a Breach aſſigned, that he was not ſeized of a good Eſtate in Eec. The Defendant pleads, that he was ſeized of as good an Eſtate as *W.* conveyed to him: Upon a Demurrer, held to be no Plea; for the Covenant is abſolute, that he is ſeized of a good Eſtate in Fee; and the Reference to the Conveyance by *W.* ſerves only to denote the Limitation and Quantity of the Eſtate, not the Defeaſibleneſs or Undefeaſibleneſs of it. See *Cook* and *Fownes*, 1 *Keb.* 95.

That he is ſeized in Fee, according to the Indentures made to him by one *W.*

Breach, that he was not ſeized in Fee.

Pleads that he was ſeized of as good an Eſtate, as *W.* convey'd to him.

The Meaning of theſe Words.

# A Covenant to make ſuch Aſſurance as ſhall be reaſonably deviſed, or as Counſel ſhall adviſe.

On Covenant for reaſonable Aſſurance, may put in the uſual Covenants into the Aſſurance.

But no Warranty.

1. **IF a Man covenant to make ſuch reaſonable Aſſurance as Counſel ſhall adviſe, (a) uſual Covenants may be put in; for the Covenant ſhall be ſo underſtood; but there muſt not be a Warranty in it.** 1 Mod. Rep. 67.

In Covenant to convey, the Plaintiff muſt ſhew what Conveyance he would have.

Covenant to make ſuch Aſſurance as ſhall be reaſonable. The Aſſurance muſt not differ from the Bargain.

2. **A Covenant to make ſuch Aſſurance, as ſhall be reaſonably deviſed, muſt be of ſuch Aſſurance, as differs not from the Bargain.** Hob. 275.

Covenant to make a good Eſtate, as ſhall be adviſed by the Plaintiff's Counſel.

Plaintiff ſays, *J. S.* his Counſel adviſed ſuch a Conveyance.

And gave the Defendant Notice thereof, and requeſted Performance.

The Advice muſt be given to him to whom the Conveyance is to be made, who is to give Notice thereof to him who is to make it.

3. **A Man covenants to make ſuch good and lawful Eſtate and Aſſurance in the Law, as by the Plaintiff's Counſel learned in the Laws ſhall be adviſed: (b) Then he ſays, That J. S. was of his learned Counſel, and adviſed ſuch a Conveyance: And that the Plaintiff gave Notice to the Defendant of the Advice, and requeſted him to perform. Whether this Advice of Counſel ought to be given to the Man, who was to make the Conveyance, or to him for whom it was to be made; and adjudged, That it muſt be given to him for whom the Conveyance is to be made,**

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(a) In a Covenant to convey in Fee, the Plaintiff ought to ſhew what Conveyance he would have. *Lutw.* 126.

(b) A Condition of a Bond to perform Covenants, whereof one was, That the Defendant ſhould before *November* 12, 1690. make a good Title in Law and Equity to the Plaintiff, to the Satiſfaction of the Plaintiff or his Counſel. The Defendant pleads Performance; the Plaintiff aſſigns a Breach, that the Defendant before the 12th of *November* had not made a good Title in Law and Equity, to the Satiſfaction of the Plaintiff or his made, and he is to give Notice thereof to the Party who is to make it.

his Counſel. And upon a Demurrer it was argued, That the Breach aſſigned was a negative pregnant *; and the Plaintiff ought to have ſhewn who was of his Counſel, becauſe the Defendant hath his Election to make the Title to him † or to the Plaintiff. *Curia*; The Defendant hath the Advantage by the Election, and he ought to have demanded of the Plaintiff who was his Counſel; and if he had refuſed, then he ought to have ſhewn this: And Judgment was given for the Plaintiff. *Rawlins* and *Vincent*, *Paſch.* 2 *W. & M. in B. R.*

* For this *vide* 1 *Leon.* 197.

† *Viz.* The Counſel.

On a Covenant to ſeal ſuch Conveyance as Counſel ſhall adviſe.

4. A Covenant that the Defendant ſhould ſeal ſuch a Conveyance of an Eſtate as Counſel ſhould adviſe; and the Breach aſſigned was, That the Defendant did not ſeal ſuch Conveyance, as his Counſel adviſed; whereas the Plaintiff ought to have ſaid, That his Counſel adviſed ſuch Conveyance, and the Defendant refuſed to ſeal it: And after Verdict upon Non eſt factum, Pollexfen pro Quer. It ſhall be intended the Covenantor's and not the Plaintiff's Counſel, becauſe the Covenantee hath none of the Deeds which made the Title, and ſo cannot adviſe any Conveyance. Holt contra; It is a vain Conſtruction to ſay, That the Counſel ſhall be intended to be the Defendant's Counſel; ſurely they will be ruled by the Defendant, and then the Plaintiff will be in a very bad Condition: And he cited 5 Rep. 19, 20. Roſwel's Caſe; and Allen and Wedgwood, Bridgman's Reports. But Judgment was given, That the Defendant who had the Deeds, ought to have produced his Title to the Counſel, and to have given Notice thereof to the Plaintiff. Paſch. 4 Jac. 2. B. R. Hayward and Gee.

The Covenantor muſt produce his Title to the Counſel, and give Notice thereof.

How Covenantor is to make the Aſſurance he covenants to make at the Covenantee's Charge.

5. A. covenants at the Coſts of B. to aſſure him ſuch Lands before ſuch a Day. The Day was paſt, and no Aſſurance tendered by the Covenantor, nor Coſts by the Covenantee: The Covenantor is to make the Aſſurance, and that may be what he pleaſeth, (a) by Fine, Feoffment, &c. and therefore he ought to notify his Readineſs to do it, and what he will do, ſo as the other may know what Coſts to tender: But if he had covenanted to have made ſome certain Aſſurance,

(a) Where a Covenant is, That the Covenantor ſhall make an Eſtate in Fee before *Michaelmas*, at the Coſts of the Covenantee, the Covenantor ought to do the firſt Act, *viz.* to notify to the Covenantee what Manner of Conveyance he will

**rance, as Fine, Feoffment, Recovery,** &c. aliter. Cro. Eliz. 517. pl. 42. Poſtea 7.

will have; that the Covenantee may know what Money to tender. 5 *Rep.* 22. *b.*

Alſo if nothing is done before the Day, the Covenant is broken, becauſe the Covenantor ought to do the firſt Act. *Ibid.*

On Defendant's Covenant to convey by ſuch Conveyance, as Counſel ſhall adviſe, his Lands in B. demiſed to C. The Plaintiff tenders Leaſe and Releaſe, with Covenants againſt a Stranger, and Warranty againſt the Defendant and his Heirs, of all his Lands in B. therefore naught.

6. **The Defendant covenants with the Plaintiff, to convey ſuch Lands unto him by ſuch Conveyance, as the Plaintiff's Counſel ſhall adviſe. The Plaintiff, by Advice of Counſel, tendred a Leaſe and Releaſe, wherein were Covenants againſt a Stranger;** (a) **and a Warranty againſt the Defendant and his Heirs; alſo the Covenant was to convey all his Lands in** B. **demiſed to** C. **and the Conveyance is of all his Lands in** B. **and therefore it was held to be naught.**

Where a Covenant is to make Aſſurance before ſuch a Day at Covenantee's Charge, the Covenantor has Election, what Aſſurance he will make; and the Covenantee is to provide the Coſts.

7. (b) **A Covenant was, That the Covenantor would make ſuch Aſſurance before ſuch a Day, to the Covenantee, at the Covenantee's Charge; (but there was no Requeſt mentioned in the Covenant on either Part) here the Obligor hath his Election of what Manner of Aſſurance he will make, and then the Obligee is to provide the Coſts for it.** Moor 454. Antea 5.

(a) Where the Covenant is to make ſuch reaſonable Aſſurance as Counſel ſhould adviſe; there, altho' reaſonable Covenants be inſerted, yet the Agreement not being to make it with reaſonable Covenants, but only reaſonable Aſſurance, the Heir is not bound to ſeal it; for it is not any Part of the Aſſurance, and the Aſſurance may be without Covenants. 2 *Cro.* 571. *pl.* 13. 1 *Roll.* 424.

(b) A Man is bound to do all reaſonable Acts, which ſhall be for Aſſurance, *&c.* to be required by the Obligee before ſuch a Day: In this Caſe a general Requeſt is ſufficient, and the Perſon bound is at his Peril to make that which is ſufficient for the Aſſurance: But if it had been to be deviſed by the Obligee or his Counſel, there he ought to ſhew what he had adviſed, and required ſuch particular Fine or Feoffment, *&c. Moor Caſe* 236.

If bound to enfeoff one of the Manor of *D.* before *Michaelmas*, if he enfeoff another before that Time, the Bond is forfeited, tho' he re-purchaſes the Land.

8. **If a Man is obliged to enfeoff one of the Manor of** D. **before** Michaelmas, **and he makes a Feoffment to another before that Time, he hath forfeited his Bond; although he purchaſes the Land before** Michaelmas, (c) **becauſe he by his own Act was once diſabled to make a Feoffment.** 5 Rep. 20. a. Co. Litt. 221, 222. Poph. 110. 1 Roll. Abr. 447. 1 Co. 25. a.

(c) If a Man ſeized in Fee of Lands, covenants to enfeoff *J. S.* upon Requeſt, and afterwards he enfeoffs,

feoffs *J. D. J. S.* ſhall have his Action of Covenant without Requeſt. 5 *Rep.* 21. *a. b. Vide* Tit. *Covenants in Leaſes.*

If a Man (bound to make a ſure Eſtate to another by *J. D.*'s Advice,) makes the Eſtate to him according to his Advice, be it ſufficient or no, it ſaves his Bond.

9. Where a Man is obliged to make to another a ſure, ſufficient and lawful Eſtate in Lands, by the Advice of J. D. If he makes the Eſtate to him according to the Advice of J. D. be it ſufficient or not, yet it is an Excuſe of the Bond. 5 Rep. 23. b.

One covenants to aſſure Lands, and the other, in Conſideration of the ſame Covenant performed, covenants to pay a Sum. He need not pay the Money till the Land is aſſured: But otherwiſe in Conſideration of the Covenant to be performed.

10. If one of the Parties covenant to aſſure Lands, and the other, in Conſideration of the ſame Covenant performed, covenants to pay a Sum of Money; he is not obliged to pay the Money until the Lands are aſſured. 2 Saund. 156. But otherwiſe it is, if the Covenant had been in Conſideration of the Covenant to be performed. Ibid. and Brocas's Caſe, 3 Leon. Caſe 290.

Where *in conſideratione performationis inde* make a Condition, and where not.

11. Where in mutual Covenants the Words, in conſideratione performationis inde, make a Condition precedent, and where not. 2 Saund. 156, 157.

Covenant that the Leaſe is indefeaſible, and to enjoy without Interruption of himſelf. The Covenant is only againſt himſelf, and thoſe claiming under him

12. A Covenant is that the Leaſe is indefeaſible, and that the Plaintiff ſhall enjoy without the Interruption of the Defendant; here the Defendant covenants not only againſt himſelf, and thoſe claiming under him, but alſo againſt the Title of a Stranger, upon the Words indefeaſible Leaſe. 1 Saund. 59.

Where a reſtrictive Clauſe may be applied to one Sentence or the other, how it ſhall be extended.

13. Where a reſtrictive Clauſe is in the firſt or laſt Part of a Sentence, or at the Beginning of the firſt, or at the End of the laſt, which in good Senſe may be applied either to the one or the other, it ſhall be extended to both the Sentences: But econtra, if ſuch Sentence is placed in the Middle of one or two Sentences. 1 Saund. 60. See Crayford and Crayford in Cro. Car. 106. and alſo in Litt. Rep. and Hughes and Bermett, Cro. Car. 498. Fitz-Gib. 214 to 224, & 199, 200, 297, 298.

A Covenant to make an Aſſignment according to Agreement, as Counſel ſhall adviſe.

The Covenantor muſt aſſign accordingly: But if to make ſuch Conveyance as Counſel ſhall adviſe, Covenantee may chuſe, and his Counſel ſhall adviſe what Conveyance is proper.

14. A Covenant to make an Aſſignment according to an Agreement between him and the Defendant, and as Counſel ſhould adviſe, (and ſays not what Counſel,) An Action was brought for Non-performance, and moved that the Plaintiff's Counſel ſhould give the Advice, becauſe he is the Perſon intereſted. 3 Mod. 191. Anſwered, That the Defendant had alſo an Intereſt; for it is an Advantage to him to make the Aſſignment, for the ſaving of his Covenant. Ibid. But it had been otherwiſe, had it been to make ſuch Conveyance as Counſel ſhould adviſe; for that the Perſon, to whom the Covenant is made, may chuſe whether he will have a Feoffment, Releaſe or Confirmation; and then

the Counſel ſhall adviſe what Sort of Conveyance is proper, Ibid. & 192. But here it is to make ſuch Aſſignment as the Parties had agreed upon. Ibid. (See much Matter more there upon this Subject.)

A Covenant that he is ſeized in Fee, notwithſtanding any Act, *&c.* and that the Lands are of the yearly Value of 200*l.* The Words *Notwithſtanding, &c.* refer not to the ſecond Covenant.

15. A. covenants that he was ſeized of a lawful Eſtate in Fee-ſimple, notwithſtanding any Act done by him, and that the Lands were of the Value of 200 l. per Ann. These Words (Notwithſtanding any Act done by him,) do not refer to the ſecond Covenant, but to the firſt only. Cro. Car. 595, 596. pl. 4. Litt. Rep. 80.

Covenant that the Lands are of the yearly Value of 100*l.* and ſo ſhall continue notwithſtanding any Act done or to be done by him.

The Words *Notwithſtanding, &c.* extend as well to the Time of the Covenant, as to the future Time.

Though not of the Value, the Covenant is not broke but by ſome Act done by him.

16. A. covenants that the Lands conveyed are of the yearly Value of 100 l. and ſo ſhall continue, notwithſtanding any Act done or to be done by him: In an Action of Covenant, the Breach aſſigned was, That the Lands were not (a) of the Value of 100 l. per Ann. and adjudged for the Defendant: For the Words Notwithſtanding any Act done, *&c.* extend as well to the Time of the Covenant made, as to the future Time. And that though they were not then of that Value, yet the Covenant was not broken, except ſome Act was done by him which was the Cauſe of it. Cro. El. 43, 44. pl. 4. 615. pl. 5. See Trenchard's Caſe; and Crayford and Crayford in Litt. Rep.

Tenant for Life leaſes for 21 Years, and covenants he had done no Act to prejudice the Leaſe, but that Leſſee ſhall enjoy againſt all Perſons.

The Words, *But that he ſhall enjoy, &c.* refer to the Words, *For any Act done by him*, &c.

17. Tenant for Life by Indenture leaſes for 21 Years, and covenants that he had not done any Act to prejudice the Leaſe, but that the Leſſee ſhould enjoy againſt all Perſons: Tenant for Life dies, and the firſt Leſſor enters; the Leſſee brings Covenant againſt the Executor of Tenant for Life; and held, That it will not lie. For the laſt Words, (But that he ſhall enjoy it againſt all Perſons,) refer to the firſt Words, viz. for any Act done by him, and ſo the Covenant is not broken. Cro. El. 615. pl. 5. & 43. pl. 4. 1 And. 12. Moor 74. pl. 204. Bendl. 150. Dyer 257.

Defendant Covenants againſt Incumbrances, and had Power to ſell.

Breach, That one of the two who conveyed to the Plaintiff was under Age, *Per quod* one Moiety veſted in the one.

18. The Defendant covenants againſt Incumbrances, and that he had poteſtatem barganizandi. The Plaintiff aſſigns for Breach, That two Women were ſeized, and conveyed to the Defendant, who conveyed to the Plaintiff, and that one of them was then at their Conveyance to the Defendant under Age, and is ſince dead, having Iſſue, per quod the Eſtate of one Moiety of the Tenements remained in her: And it was moved in Arreſt of Judgment, That the Plaintiff hath not ſhewn that he was diſturbed in his Poſſeſſion. Curia: The Covenant is broken, and the Action well lies. Naſh and Aſhton, Paſch. 34 Car. 2. 2 Jones 195.

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(a) Doth not ſay at the Time of the Covenant.

How to plead to a Covenant for Enjoyment.

19. How to plead to a Covenant for quiet Enjoyment. Lutw. 608.

To enjoy without Moleſtation, the Word *Moleſtation* extends not to perſonal Torts.

20. Where a Covenant is to enjoy without Moleſtation, it ſhall not extend to perſonal Torts, as to Beating and Aſſaulting the Covenantee, but to an Entry upon and diſturbing of his Poſſeſſion. Cro. El. 421. pl. 16. 3 Lev. 305.

*Habens legalem titulum* is not a ſufficient Breach, without ſaying what Title.

21. It is not a ſufficient Breach to ſay, That J. S. habens legalem titulum entered, without ſaying what Title. 1 Lev. 301. See 1 Mod. 101 & 292.

Breach aſſigned, that *A.* entred by Title, made before the Title made to the Defendant, and ſays not what Title.

22. In Covenant the Plaintiff aſſigns a Breach, That A. B. entered by Title, made before the Title made by the Defendant to the Plaintiff,* not ſaying what Title; and Judgment was given for the Plaintiff, that the Covenant was broken. 3 Lev. 325. 1 Mod. 135. 1 Vent. 84. 2 Lev. 37. 1 Mod. 66.

* Be the Title derived from whom it will, it being before the Articles made to the Plaintiff, the Covenant is broken. 3 *Lev.* 325.

Breach that *J. S.* diſturbed him, without ſaying by what Title, and then he is only a Treſpaſſer.

23. In Covenant the Plaintiff aſſigned a Breach, that J. S. diſturbed him, but ſhews not that he had not any Title ſo to do; † and then he is only a Treſpaſſer, againſt whom the Plaintiff may bring Treſpaſs, and not Covenant againſt the Covenantor. 3 Lev. 305.

† When a Covenant is generally to keep harmleſs, *&c.* the ſame extends only to a lawful Interruption: But when it is ſpecial againſt ſuch a Man, then it extends to any Interruption whatſoever by him. 1 *Leon. Caſe* 458. *Cro. Eliz.* 212. *pl.* 4. 213.

Entry by a Stranger by prior Title, not ſaying what Title, is good.

24. Upon a Sale of Land, there was a Covenant that the Plaintiff ſhould enjoy it againſt A. and B. The Defendant pleads Performances generally; Plaintiff replies, That A. and B. habentes jus virtute tituli eis inde facti ante the Conveyances and Covenant to him, entred upon him and ouſted him. The Defendant demurred, ſuppoſing the Breach to be too general, not ſhewing by what Title they entered: But adjudged to be good, the Plaintiff being a Stranger to the Title of A. and B. 2 Lev. 37.

A Covenant for farther Aſſurance.

And the ſaid R. G. for himſelf, his Heirs, Executors, and Adminiſtrators, and for every of them, doth further covenant, promiſe and grant, to and with the ſaid A. B. his Heirs and Aſſigns, and every of them by theſe Preſents, That he the ſaid R. G. his Heirs and Aſſigns, and all and

Is not to give, but to aſſiſt and ſupport.

1. A Covenant for further Aſſurance, is not to give any Thing, but to aſſiſt, further and ſupport, it being as a Wall or Muniment about the Eſtate. *Hob.* 215.

Covenant to aſſure on Requeſt; Grant to another before Requeſt is a Breach.

2. In a Covenant to make an Aſſurance upon Requeſt, if the Covenantor makes any Grant to a Stranger before

and every other Perſon and Perſons whatſoever lawfully claiming, by, from, or under him, ſhall and will from Time to Time, and at all Times hereafter, within the Space of ſeven Years next enſuing the Date of this preſent Indenture, * at and upon the reaſonable Requeſt, and proper Coſts and Charges in the Law of the ſaid A. B. his Heirs and Aſſigns, or ſome of them, do, make, levy, execute, acknowledge and ſuffer, or cauſe to be done, made, levied, executed, acknowledged and ſuffered, all and every ſuch farther and other reaſonable Act and Acts, Thing and Things, Aſſurances and Conveyances in the Law whatſoever, for the farther, better, and more perfect Aſſuring, Surety, Sure-making, Conveying, Settling, Eſtabliſhing and Confirming of the ſaid Meſſuages, Lands, Tenements, Hereditaments, and all and ſingular other the Premiſſes hereby granted, bargained and ſold, or named, mentioned, or intended to be herein and hereby granted, bargained and ſold, and of every or any of them, and of every or any Part or Parcel thereof, with all and ſingular their and every of their Appurtenances, unto the ſaid A. B. his Heirs

and

* Or ſuch other Term of Years as ſhall be agreed upon between the Parties.

fore Requeſt, it is a Breach of the Covenant, without a Requeſt; becauſe the Covenantor hath diſabled himſelf to make a new Leaſe or farther Aſſurance, and ſo a Requeſt would be in vain. *Moor, fo.* 457, 753. 5 *Co.* 21. *Cr. Eliz.* 450, 479. *Poph.* 109.

So where the Defendant covenanted, that the Plaintiff ſhould have ſuch Land, and the Defendant had nothing therein; an Action of Covenant lies. 1 *Roll. Rep.* 397.

On a Covenant to convey ſuch Lands wherein he has nothing, Covenant lies.

How to plead to a Covenant for farther Aſſurance by Fine, *&c. Lutw.* 609.

How to plead to a Covenant for farther Aſſurance by Fine.

3. In a Covenant for farther Aſſurance, it is a good Plea to ſay, that the Fine * compriſed more than was conveyed. 1 *Roll. Rep.* 103, 117. But ſee 1 *Bulſt.* 90. *Aliter* in Caſe of a Fine, and the Reaſon there given.

* Or other Conveyance. Covenant for farther Aſſurance; it ſeems, That the Covenantor is not obliged to make it with Covenants. 1 *Sid.* 461.

4. A Man covenants at any Time during the Life of *J. S.* upon a Surrender of his Leaſe † to make him a new one for ſo many Years, the Covenantor afterwards accepts of a Fine *ſur* Grant and Render of the Land to the Conuſee for 80 Years; this is a Breach of Covenant, although no Surrender was

made

† Although here the Covenantee was to do the firſt Act, yet when the Covenantor had diſabled himſelf, the Covenant is broken.

and Aſſigns, be it by Fine or Fines, Feoffment or Feoffments, Deed or Deeds indented or Poll, inrolled or not inrolled, Common Recovery or Recoveries, with ſingle, double, or treble Voucher or Vouchers, Releaſe or Confirmation, or by all and every or any of the ſaid Ways or Means, or by any other Ways and Means in the Law whatſoever, as by the ſaid A. B. his Heirs and Aſſigns, or by his or their Counſel learned in the Law, ſhall be reaſonably deviſed, adviſed or required; ſo as the ſaid farther Aſſurances to be made, or any of them, do not, nor ſhall contain any farther or other Warranty, or Covenants for enjoying, than only againſt the Parties thereunto reſpectively, and their reſpective Heirs, touching and concerning Acts and Deeds done or ſuffered by them, or any of them; and ſo as for the making thereof, they be not compelled to travel beyond the Cities of London and Weſtminſter.

**That all further Aſſurance to be made, ſhall be to the Uſes mentioned in the Deed.**

And laſtly, It is covenanted, granted, concluded and agreed upon, by and between all and every of the ſaid Parties to theſe Preſents, That ſuch farther Aſſurance ſo as aforeſaid, or in any other Manner to be made, by and between the ſaid Parties to theſe Preſents, or any of them, of the ſaid Manor of H. together with all the Meſ-

Meſ-

made. For by the Fine the Covenantor had diſabled himſelf to take a Surrender or make a new Leaſe. *Et lex neminem cogit ad vana ſeu inutilia peragenda.* 5 Rep. 20. a. 2 And. 18. Mo. 452. pl. 619. Cr. Eliz. 450, 479. Poph. 109, 110. 1 Bulſt. 21. Co. Litt. 221, 222. 1 Co. 25. a. 1 Roll. Rep. 447.

**If a Man is bound to enfeoff one of the Manor of D. before *Michaelmas*; if he enfeoff another before that Time, though he re-purchaſes, the Bond is forfeited.**

5. If a Man is obliged to enfeoff one of the Manor of *D.* before *Michaelmas*; if he makes a Feoffment to another before that Feaſt, he hath forfeited his Bond, although he re-purchaſes the Land before *Michaelmas*; becauſe he by his own Act hath once diſabled himſelf. 5 *Rep.* 20. *a.*

**Covenant to aſſign according to Agreement, as his Counſel ſhall adviſe.**

**The Defendant muſt make the Aſſignment to ſave his Covenant.**

**But where the Covenant is to make ſuch Conveyance as Counſel ſhall adviſe, Covenantee may chuſe, and his Counſel adviſe what Conveyance is proper.**

6. A Covenant to make ſuch Aſſignment to the Plaintiff, according to an Agreement made between him and the Defendant, as Counſel ſhould adviſe; it was objected, That the Plaintiff's Counſel ſhall give the Advice, becauſe he is the Perſon intereſted. Anſwered, That the Defendant had likewiſe an Intereſt in the Matter; for it is an Advantage to him to make the Aſſignment that his Covenant might be ſaved. It is true, it had been otherwiſe if it had been to make ſuch Conveyance as Counſel ſhould adviſe; for then the Perſon to whom the Covenant is made, may chuſe what Conveyance he will have, and his Counſel ſhould adviſe him what is proper: But

here

**Meſſuages, Lands, Tenements, Meadows, Paſtures, Woods, Underwoods, Hereditaments and Premiſſes whatſoever beforementioned, with all and every the Appurtenances as aforeſaid, ſhall be and enure only to ſuch Uſes, Intents, and Purpoſes, as in and by theſe Preſents is before recited, mentioned, expreſſed and declared, and to and for no other Uſe or Uſes whatſoever.**

here it is to make an Aſſignment, and ſuch as the Parties had agreed on. *Econtra*, it was argued, That all Deeds are taken according to the general Intendment, and therefore by this Covenant, his Counſel * is to adviſe to whom the Aſſignment is to be made; for if the Counſel of the Defendant ſhould adviſe an inſufficient Deed, that would not have ſaved his Covenant. 3 *Mod. Rep.* 191, 192. 5 *Co.* 23. *b.*

* *Viz.* The Plaintiff's.

7. Where there is a Covenant for farther Aſſurance, as the Counſel of *B.* ſhall deviſe, and it is not ſaid at whoſe Charge, it muſt be at the Charge of him to whoſe Uſe the Fine is levied. 1 *Bulſt.* 90.

The farther Aſſurance is at Covenantee's Charge, where it is not mentioned at whoſe Charge.

8. One covenants to make an Eſtate in Fee at the Coſts of the Covenantee, the Covenantor is to do the firſt Act; *viz.* to let him know what Conveyance he will make. 2 *Mod. Rep.* 75.

Covenantor is to do the firſt Act, when he covenants to convey in Fee at the other's Coſts.

9. A Covenant was, That the Covenantor ſhould make ſuch Aſſurance before ſuch a Day, to the Covenantee, at the Coſts of the Covenantee: (But there was no Requeſt mentioned on either Side.) Here the Obligor having Election what Manner of Aſſurance he will make, ought firſt to give Notice to the Obligee, what Aſſurance he will make, and then the Obligee is to provide the Coſts. *Moor* 454. *Caſe* 622, 631.

Where the Obligor may chuſe what Aſſurance he will make, he muſt give Notice to the Obligee.

10. Where a bad Title was ſold with a Covenant for farther Aſſurance, and afterwards the Vendor purchaſes a good Title, he ſhall make the ſame over to the Vendee. *Chanc. Rep.* 274.

If Vendor of a bad Title with Covenant for further Aſſurance, purchaſe a good Title, he ſhall make the ſame over to the Vendee.

11. A Man ſells Lands in Fee, and covenants to make ſuch farther Aſſurance to the Bargainee as his Counſel ſhall adviſe; here the Bargainee, though he be learned in the Laws, cannot deviſe the Aſſurance, but ſome of his Counſel ought to do it: For if the Party himſelf could do it, then *Conſilium non dedit adviſamentum*, would be a good Plea. 5 *Rep.* 19. *b.* *Cr. Eliz.* 297. S. C. 1 *Roll. Abr.* S. P. *cont.*

Covenant for farther Aſſurance as Counſel ſhall adviſe. The Bargainee though learned in the Law, cannot deviſe the Aſſurance, but his Counſel.

1 . A Covenant that the Defendant ſhall, during the joint Lives of the Plaintiff and Defendant, make a good Aſſurance in Law, of ſuch Lands, diſcharged of all former Bargains, Sales, *&c.* made by the Defendant, as the Plaintiff's Counſel upon Requeſt made ſhall adviſe. And the Plaintiff alledges,

That one *A. B.* was of his learned Counſel, and did give his Advice to the Plaintiff, that the Defendant ſhould make ſuch a Deed; of which Advice the Plaintiff gave the Defendant Notice, and requeſted him to make it, but he refuſed it. It was after Verdict moved, That this Advice of Counſel ought to have been given to the Defendant himſelf by the Counſel, and not to the Plaintiff. But it was adjudged, That Counſel ought to be given to the Plaintiff for whom he is of Counſel, * and he to notify this to the Defendant, who is to make over the Eſtate. 5 *Rep.* 19. *b.* 20.

* Where a Deed is to be made as Counſel ſhall adviſe, this ought to be the Counſel of him who ought to have the Deed. 3 *Bulſt.* 168. See where the Counſel ought to Draw and Engroſs the Aſſurance. *Moor* 595.

13. If a Man is obliged to make a ſure, certain, and ſufficient Eſtate in Lands by the Advice of *A. B.* if he make an Eſtate according to the Advice of *A. B.* be this ſufficient or not, legal or not legal; yet he is excuſed from his Covenant. 5 *Rep.* 23. *b.*

Where a Man is obliged to make an Eſtate by the Advice of *A. B.* if he makes it accordingly, he is excuſed the Covenant though inſufficient.

# Covenants in Leaſes.

All Covenants are either Covenants in Law, or expreſs Covenants.

But an expreſs Covenant reſtrains a Covenant in Law.

1. **ALL Covenants between the Leſſor and his Leſſee, are either Covenants in Law, or expreſs Covenants.** Vaugh. 113. **But where there are expreſs Covenants, the Covenants in Law are reſtrained.** (a) Vaugh. 118, 126. and Noke's **Caſe, in** Co. 4 Rep. 80. b.

By Covenant in Law, on the Word *Demiſe*, Leſſee ſhall enjoy againſt all but tortious Entries.

On expreſs Covenant to enjoy againſt all Men, for any Act done by him, &c. an Action of Covenant lies not, unleſs ouſted by Eigne Title.

2. **By Covenant in Law, upon the Word** Demiſe (b) **the Leſſee is to enjoy his Leaſe againſt the lawful Entry, Eviction or Interruption of any Man, but not againſt tortious Entries, Evictions or Interruptions; becauſe for ſuch tortious Acts, the Leſſee hath his proper Remedy againſt the Wrong-doer.** (c) **By the ſame Reaſon, if the Leſſee be by expreſs Covenant to enjoy his Term againſt all Men, or notwithſtanding any Act done by the Leſſor or any claiming under him, the Leſſee ſhall not have an Action of Covenant againſt the Leſſor, unleſs he is ouſted; for if he is tortiouſly ouſted by a Stranger, he hath his**

A Covenant in Fact reſtrains a Covenant in Law.

(a) A particular Covenant in Fact ſhall reſtrain a general Covenant in Law. 1 *Saund.* 60. 4 *Co.* 80. *Cr. Eliz.* 674. *Yelv.* 175.

Covenant on the Word *Dimiſi*, having no Title to make the Leaſe.

But if a particular Covenant, it will not lie without Entry and Eviction.

(b) If a Man demiſes that which he has not Title to demiſe, an Action lies againſt him, on the Word *Dimiſi*, altho' there was no Entry upon the Leſſee: But if it were an expreſs Covenant for quiet Enjoyment, then it will not lie without an Entry and Eviction. *Hob.* 12. 1 *Roll. Abr.* 520. 2 *Brownl.* 22. But *vide* in *Rolle* the Caſe immediately following. 1 *Roll. Abr.* 520. *Owen* 105.

Leſſor covenants for quiet Enjoyment; if he illegally ouſt him, the Covenant is broke.

(c) *Vaugh.* 118, 119. Where the Leſſor covenants that the Leſſee ſhall quietly enjoy, if he, (*viz.*) the Leſſor, doth illegally ouſt him, it is a Breach of the Covenant. *Cro. El.* 544. *pl.* 15.

Muſt ſet forth the Title of the Interruptor.

Where the Covenant is to enjoy without the Interruption

**Remedy.** (a) **But if the Leſſor expreſly covenants that the Leſſee ſhall enjoy without the Entry or Interruption of any,** (b) **then the Leſſor ſhall be charged by an Action of Covenant for the tortious Entry of Stranger, becauſe no other Meaning can be given to this Covenant.** Vaugh. 119. Lucas 384. Poſtea 3, 10, 13, 24, 26, 43, 44, 48.

Covenant for quiet Enjoyment againſt a particular Perſon, ſhall extend to his tortious Acts.

3. **But where a Man covenants for quiet Enjoyment againſt a particular Perſon,** (c) **there it ſeems the Covenant ſhall extend to his tortious Acts.** Vaugh. 125 to 128. Hob. 35. Poſtea 48.

Leaſe and Covenant by two, that there is no Incumbrance made by them; an Incumbrance by either is a Breach.

4. **Two make a Leaſe, and covenant, that the Leſſee ſhould not be diſturbed, and that there was not any Incumbrance made by them, and it is not ſaid** or either of them; **and one of them makes an Incumbrance: Adjudged, that** them **ſhall not be taken jointly; But an Incumbrance by either of them is a Breach of the Covenant.** Latch 161. Poph. 200.

A Suit in Chancery is no Breach of Covenant for quiet Enjoyment.

5. **A Suit in Chancery is no Breach of a Covenant for enjoying without Diſturbance.** 859. Raym. 371, 372. 2 Vent. 213, 214. Poſtea 47.

Covenant to enjoy a void Leaſe is a void Covenant. But to enjoy a voidable Leaſe is good, till avoided.

6. **A Covenant to enjoy a Leaſe which is void, is a void Covenant; but a Covenant to enjoy a voidable Leaſe is good, until the Leaſe is avoided.** Moor, fol. 875.

Aſſignee of Part of a Term ſhall not have Covenant.

7. **Aſſignee of Part of a Term ſhall not have Covenant.** Moor, fol. 93. **But** 2 Bulſtr. 281, 282, 283, **ſeems to be contrary.** Vide Co. Litt. 215. a. Godb. 162. 1 Roll. Rep. 80. Owen 151. 1 Leon. 252.

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ruption of any Perſon, yet the Title of him who interrupts muſt be ſet forth. 1 *Ventr.* 62.

(a) *Hob.* 34, 35. *Vaugh.* 119. Where the Breach is aſſigned in the Entry of a Stranger, there he ought to ſhew a Title in the Stranger: But it is otherwiſe when the Leſſor himſelf enters. *Moor* 861.

(b) Where the Covenant is, that the Leſſee ſhall enjoy without Moleſtation, the Word (*Moleſtation*) ſhall not extend to perſonal Torts, as to Beating or Aſſaulting, but to any Entry diſturbing his Poſſeſſion. *Cro. El.* 421. *pl.* 16.

Covenant to enjoy, binds not againſt wrongful Ejectors, unleſs particular againſt *A.* or againſt all Strangers.

(c) Covenant that the Leſſee ſhall enjoy, binds not againſt a wrongful Ejector, unleſs it is particular againſt *A.* who wrongfully ejects, or elſe expreſly againſt all Strangers. *Hob.* 35.

It muſt be an expreſs Covenant that is againſt all wrongful Acts.

The Law ſhall never judge, that I covenant againſt the wrongful Acts of Strangers, except my Covenant is expreſs to that Purpoſe, for the Law defends every Man againſt Wrong. *Hob.* 35.

Covenant lies upon the Words, *That Leſſee ſhall do ſuch an Act.*

8. **In a Leaſe for Years, if there are theſe Words,** And that the Leſſee ſhall do ſuch an Act, **Covenant will lie upon theſe Words.** Moor, fol. 135.

A Covenant with two jointly and ſeverally is joint or ſeveral, according to the Intereſt.

9. **A Covenant with two jointly and ſeverally, it is joint or ſeveral, according to the Intereſt.** (a) Moor, fol. 849. 1 Saund. 153, 155. 1 Bulſt. 25, 26. Poſtea 79.

Where Merchants covenant ſeparately with the Owners of a Ship, it is ſeveral as to the Merchants, and joint as to the Owners.

(a) In Covenants between Maſter and Owners of a Ship and Merchants, where the Words of the Merchants are, *Conveniunt ſeparatim* with the Owners; theſe Words make them ſeveral, and not joint Covenants, as to the Merchants, and joint as to the Owners: And in this Caſe, if any of the Merchants Seals be broken off, this doth not avoid the Deed, but only as to him; but if any of the Owners Seals be torn off, all the Covenants as to them are deſtroyed. 5 *Rep.* 23. *a.*

*Conventum & agreatum eſt* between the Parties, makes it joint, and they ought all to join. 1 *Bulſtr.* 25, 26.

In a Covenant where the Intereſt is joint, they ought all to join; *aliter* where it is ſeveral. 1 *Bulſtr.* 26. *Vide the following Caſes,* 5 *Co.* 18. *b. Hob.* 172. 2 *Leon.* 27. 2 *Roll. Abr.* 149. *Skin.* 401. *Tel.* 177. 5 *Co.* 19. *a.* 1 *Show.* 8. 2 *Keb.* 44. 2 *Sid.* 107. *Comb.* 115. *Skin.* 401. *Carth.* 98. *Comb.* 163.

Breach on Covenant, for quiet Enjoyment that a Stranger evicted him, without ſaying he had a Title, is naught.

*Habens priorem & legalem Titulum* would be good.

10. **Upon a Covenant for quiet Enjoyment, the Breach aſſigned was, that a Stranger entered and evicted him, but doth not ſay that he hath a Title; it is naught.** Habens priorem & legalem titulum **at the Time of his Entry would have been good: But it is ſafe to ſay alſo, not having any Title from the Plaintiff.** 1 Mod. Rep. 293, 294. 2 Saund. 178. Antea 2. Poſtea 13, 23, 25, 43.

A Husband purchaſes Land to him and his Wife for Jointure, Leaſes and Covenants to enjoy without Interruption of him, or any other by his Title. If the Wife ouſt the Leſſee, Covenant lies againſt Husband's Executors.

11. **The Huſband purchaſes Land by Fine, to him and his Wife, which is a Jointure for his Wife, and makes a Leaſe of it, and covenants that the Leſſee ſhall enjoy it without Interruption of him, or any other by his Means, Title or Procurement: If the Wife ouſt the Leſſee, an Action will lie againſt the Huſband's Executors; for that the Wife was in the Eſtate by means of the Purchaſe and Procurement of the Huſband.** Palmer 339, 340. 2 Roll. Rep. 286, 287, 288. Cr. Ja. 657.

Leſſee covenants to leave the Land in as good Condition as demiſed, and cuts down Trees, Covenant lies not till the Term is ended, but Waſte will.

12. **Leſſee covenants that he will leave the Land in as good Condition as it was demiſed to him; he cut down Oaks, which could not grow again during the Term; Covenant doth not lie till after the Term, but Waſte lies preſently.** 2 Roll. Rep. 332, 347, 348.

In a Covenant upon a Warranty of Lands for Years, the Plaintiff ought to ſhew what Eſtate he who entered had at the Time of his Entry.

13. **In a Covenant upon a Warranty of Land for Years,*  the Plaintiff ought to ſhew what Eſtate or Right he who entered had at the Time of his Entry; for it is not ſufficient for him to aver that he had a good Title.** 2 Saund. 178 to 181. 1 Mod. Rep. 101. Antea 2, 10. Poſtea 23, 26, 43.

* A *Warrantia Chartæ* was brought, where a Term for Years only was evicted, and a Verdict for the Defendant; but ſays the Book, that altho' Covenant had been the proper Action, in this Caſe of the Eviction of a Term, yet if the Defendant will accept Judgment, he ſhall have his Coſts. 3 *Lev.* 321, 322.

Leaſe of a Houſe and Eſtovers, Covenant lies if Leſſee deſtroy the Wood.

14. **If a Leaſe is made of a Houſe and Eſtovers; if the Defendant deſtroys all the Wood, Covenant lies.** 1 Saund. 322.

Covenant on the Word *Dimiſi.*

15. **When the Uſe of a Thing is demiſed, and the Thing falls to decay, ſo that the Leſſee cannot have the Uſe and Benefit of it, the Leſſee ſhall have his Action of Covenant for it, upon the Word** Dimiſi. 1 Saund. 321. 1 Ventr. 44, 45. 5 Co. 17. a.

That the Houſe was burnt by Caſualty, no Plea on Covenant for Repairs.

16. **When Leſſee for Years by Leaſe covenants to repair, it is no Plea to ſay, that the Houſe was burnt by Caſualty.** (a) Style 162.

(a) Where the Leſſee covenants to repair; in an Action of Covenant brought by the Leſſor againſt him for Defect of Reparations, he concludes, *Et ſic infregit conventionem: Non infregit conventionem* is an ill Plea upon a Demurrer, but it is good after Verdict; and in that Caſe the Defendant ought to anſwer to every Breach, and conclude to the Country.

Leſſee covenants not to aſſign, he breaks the Covenant if he aſſigns; tho' the Leſſor enters into Part.

17. **Where the Leſſee covenants that he will not aſſign, he hath broken his Covenant if he aſſigns, altho' his Leſſor entered into Part of the Land demiſed before.** Style 265.

Covenant lies on a Covenant in Law againſt an Executor.

18. **An Action of Covenant upon a Covenant in Law, lies againſt an Executor for Rent.** Style 387. Antea 1. Poſtea 19.

Covenant for Rent lies on the Words *Yielding and Paying*, againſt Executors.

19. **Covenant lies for Rent upon the Words** Yielding and Paying, **being a Covenant in Law againſt an Executor: The Words** Yielding and Paying **make an expreſs Covenant.** Style 406, 407, 431. 1 Sid. 266. 2 Brownl. 215. 1 Sid. 401. 1 Mod. 92. 1 Vent. 10. 2 Jones 192. 3 Lev. 155. Antea 1, 13.

Where the laſt Words ſhall not reſtrain the former.

20. **A Covenant, that he hath an indefeaſible Leaſe, and ſhall enjoy without the Let, &c. of any claiming under him. The laſt Words ſhall not reſtrain the former*.** 1 Sid. 328.

* *Viz.* That he hath an indefeaſible Leaſe.

Covenant by the Year, that the Covenantee ſhall have ſuch Lands at ſuch a Rent, amounts to a Leaſe.

21. **Where the Owner of the Lands covenants by the Year that the Covenantee ſhall have ſuch Land at ſuch a Rent, this ſhall amount to a Leaſe.** 5 H. 7. 1.

*Secus* if nothing in the Land.

1 Leon. 129. 1 Sid. 428. 1 Mod. 14. 2 Keb. 561. 2 Lev. 194. 3 Keb. 761. Hard. 366. 1 Leon. 136, 303. Cr. Eliz. 1, 173. Owen 97. 1 Roll. Abr. 847. Fitz. Tit. Aſſiſe, pl. 412. But if he hath nothing in the Land, it ſhall amount to more than a bare Covenant. 3 Bulſtr. 204, 252. Poſtea 41.

Covenant to give one thing or another veſts the Property preſently.

22. One covenants that I ſhall have his Horſe, or his Cow, here by this Covenant the Property is preſently altered. 3 Bulſtr. 252.

The Diverſity between *Warrantia Chartæ* and Covenant.

23. There is a Diverſity between a Warrantia Chartæ and a Covenant; the one is real, and binds the Lands it ſelf that the Leſſor had at the Time of the Judgment, and the other is perſonal, (viz.) upon the Covenant where only Damages are to be recovered. Yelv. 139. Antea 13.

If a Stranger *Sans* Title enters on the Leſſee, Covenant lies not againſt Leſſor.

24. If a Stranger enters without Title upon a Termor, be he for Years or Life, Treſpaſs lies againſt him, but no Action of Covenant lies againſt the Leſſor; for the Tenant muſt defend himſelf againſt the Tort-feaſor. Antea 2. Poſtea 26, 43.

Where Tenant for Life is evicted of all his Eſtate, under Leſſor's Title, no Remedy on Covenant.

But by *Warrantia Chartæ*.

25. But if all the Eſtate for Life is evicted under the Title of the Leſſor, the Leſſee ſhall not have Covenant upon the Covenant in Law; where if he ſhould, he could recover only Damages, but his Remedy is by Warrantia Chartæ. Yelv. 139. 1 Keb. 821. Hob. 4. Noy 131.

Breach aſſigned (on a Covenant not to have done any Act to diſturb Plaintiff) that *A.* recovered Dower is no Breach.

26. Where a Man covenants that he hath not done any Act to diſturb the Plaintiff in his Poſſeſſion, but that he ſhould hold it without Diſturbances of the Defendant or any other Perſon: The Plaintiff aſſigns for Breach that one A. recovered Dower out of the Land; the Defendant ſays, that the Recovery was before he ſold to the Plaintiff. Curia: The Defendant is not bound to warrant peaceable Poſſeſſion, but only for all Acts done or to be done by him. Daliſon 59. Antea 2, 10, 13, 24, 26, 43.

Covenant, that the Land is diſcharged of Incumbrances, is broke by not paying a Poſt-fine.

27. A. covenants that the Land is diſcharged of all Acts and Incumbrances done by him, whereas in truth, a Poſt-Fine was not paid: The Covenant is broken, for that the Land was, and all other of the Plaintiff's Lands were chargeable with the Poſt-Fine. Daliſon 73.

Covenant to repair, and Leſſor covenants to give Notice to repair within three Months.

Proviſo for Non-performance of Covenants, Leaſe to be void.

The ſecond Covenant qualifies the firſt, but the Proviſo ſeparates them.

28. A Covenant to repair, except in principal Timber; and the Leſſor covenants, that if there were need of Reparations, he would give Notice, and that the Leſſee ſhould repair within three Months; and there was afterwards a Proviſo, that if the Leſſee did not perform all the Covenants, his Leaſe ſhould be void: It was agreed, that the ſecond Covenant qualified the firſt, but that the Proviſo afterwards ſeparated them, for that the

Leſſee was bound to repair, without Warning, as often as there was need. Litt. Rep. 205.

Covenant that Leſſor after four Years might come to ſee if any Waſte: Yet Leſſor may view when he pleaſes.

29. Leſſee covenants that after four Years the Leſſor might come twice a Year to ſee if there were any Waſte done: The Leſſor comes within the four Years; and adjudged that he might, for that this particular Covenant doth not take away the general Covenant in Law, which is, that the Leſſor may come when he pleaſes, to ſee whether any Waſte is done. Ibid. 205.

If a Grant is good, all ſubſequent Qualifications reſtrain a Covenant in Law.

30. If the Grant is good at firſt, all ſubſequent Qualifications by Covenants reſtrain the general Covenant in Law: But it is otherwiſe where it is not good. Litt. Rep. 206.

Qualifications to precedent Sentences go not to the next, if they need no Explanation by them.

31. It hath been held, That Relations and Qualifications to precedent Sentences, never go over the next Sentence to them, if it doth not appear, that the others have need of Explanation by thoſe ſubſequent Words. Litt. Rep. 206.

Covenant, after Leſſor has repair'd Leſſee will ſuſtain, is conditional.

32. Where the Covenant is, that ab & poſt Reparationes by the Plaintiff, the Defendant will repair and ſuſtain, &c. This is conditional, and the Plaintiff ought firſt to repair. Cro. Jac. 645. Poſtea 46, 54.

Leſſor putting the Houſe in Repair, Leſſee ſhall ſo keep it, are mutual Covenants.

In Covenant, the Words were, the Plaintiff putting the Houſe in good Repair, the Defendant ſhould keep it ſo; theſe are held to be mutual Covenants. *Raym.* 183. *Style Rep.* 140. *Bragg* and *Nightingale*. What are mutual Covenants, and what not, *vide Mod. Caſes in Law and Equity* 40, 41, 69, 70, 105, 294, 295.

Covenant on 3 Months Warning to repair, and to leave it repaired.

The Clauſe to leave it repaired, is diſtinct, and depends not on the other.

33. The Defendant covenants that at three Months Warning during the Term he would repair, and leave it well repaired at the End of the Term: The Clauſe to leave it well repaired at the End of the Term, is diſtinct by it ſelf, and doth not depend upon the former Clauſes; for he ought to leave it ſufficiently repaired at his Peril, at the End of the Term, without Notice: The three Months Notice refers only to Reparations within the Term. Cro. Jac. 644. pl. 7. Poſtea 47.

Covenant that Leſſee may take Houſe-boot, without committing Waſte, is vain.

34. Leſſor covenants that the Leſſee ſhould have Houſe-boot, Hay-boot, and Plough-boot, without committing Waſte, upon Pain of Forfeiture; Whether this was a Condition? Curia: This Covenant is no more than what the Law appoints, and therefore vain. Alſo it is a Covenant on the Part of the Leſſor, and therefore cannot be a Condition. Cro. El. 604. pl. 18.

Leaſe of a Farm, except one Cloſe, into which Leſſee enters, is no Breach of Covenant, but a Treſpaſs.

35. Leſſor lets a Farm, and excepts one Cloſe called A. the Defendant enters into it: Adjudged no Breach of Covenant; but Treſpaſs would lie for it. Cro. El. 657, 658. pl. 1. Carth. 232. 1 Salk. 196. 1 Show. 388. Mo. 553.

Covenant to make a Leaſe of Land, not good.

36. A Covenant to make a Leaſe of Land, without ſaying for what Time, is not good, (a) becauſe it is General, for it might be at Will. Cro. El. 565, 566. pl. 30.

Covenant to have Land for ſixty Years after *A.*'s Death, good.

(a) A Covenant and Agreement, to have the Land for ſixty Years after the Death of *A.* is a good Leaſe of the Land for that Time. *Noy*'s *Rep.* 14. See *Tiſdale* and *Eſſex* in *Hob.* *Bro.* Tit. *Leaſes*, 20, 30, 60. *Cr. Ja.* 42, 659. *Palm.* 201. 1 *Leon.* 118, 119. 3 *Bul.* 252. *Cr. Car.* 207. 1 *Jones* 231. *Hob.* 35. *Mo.* 861. 2 *Brownl.* 23. 1 *Roll. Rep.* 397. 3 *Bul.* 204. 1 *Roll. Abr.* 847. *Yel.* 85. 1 *Brownl.* 136. *Cr. Eliz.* 223.

Leaſe rendring Rent, Proviſo that Leſſee gather certain Rents, and pay to Leſſor, is no Covenant but a Condition.

37. A Demiſe by Articles indented, rendring Rent; Proviſo that the Leſſee ſhall gather the Rents mentioned in the Schedule, and pay the ſame within twenty Days after the Quarter-day. (b) This is not a Covenant, but meerly a Condition annexed to the Eſtate, which determines it by the not Collecting and Paying of the Rents. Cro. Car. 128, 129. pl. 3. 1 Roll. Abr. 518. Cr. Eliz. 242, 385. 2 Co. 71.

(b) A Leaſe to *B.* for Life, Proviſo that if the Leſſee dies within forty Years, that then the Executor of the Leſſee ſhall have this for ſo many of the Years as amount to forty Years, to be accounted from the Date of the Indenture of Leaſe; this Proviſo ſhall not make a Leaſe, but only a Covenant. 1 *Roll. Abr.* 513. 1 *Co.* 155. *Mo.* 478.

Leſſee's Covenant to pay the Rent amounts to a Reſervation, and ſhall go to the Heir.

38. Where the Leſſee covenants to pay to the Leſſor and his Heirs the annual Rent of ten Pounds, this amounts to a Reſervation, and ſhall go to the Heirs as a Rent, and not to the Executor as a Sum in Groſs*. Cro. Car. 207. pl. 1.

* Where by Articles it is covenanted, that the Plaintiff lets to the Defendant for five Years after *Michaelmas*, at ſuch a Rent; and another Covenant, that a Leaſe ſhall be made before *All Saints*. *Per Curiam*; By the Articles, the Leaſe is to commence at *Michaelmas*, and by the Covenant he may make it at *All Saints*. *Noy* 57.

A Covenant broken cannot be releaſed after Aſſignment.

39. The Covenantee cannot releaſe an Action for a Covenant broken, after he has aſſigned. (c) Cro. Car. 503.

(c) A Releaſe of all Covenants will be a good Diſcharge of the Covenant, before broken. *Co. Litt.* 292. *b.*

Covenant againſt Leſſee after Aſſignment and Acceptance of Rent.

40. Covenant (upon an expreſs Covenant for ſomething to be done upon the Land) lies againſt the Leſſee, after Aſſignment of the Term, and Acceptance of the Rent,

by the Leſſor of the Aſſignee. (a) Cro. Car. 188. pl. 8. 1 Rol. Abr. 5. Cr. Ja. 309, 521. So againſt the Executor of the Leſſee. 1 Roll. Rep. 359. 2 Rol. Rep. 63. Poph. 136. Godb. 276. Cr. Car. 580. 1 Jones 223. 1 Sand. 240. 1 Brownl. 20. Style 300. 2 Mod. 139. 1 Sid. 402, 447. 2 Keb. 640. But Debt lies not for Rent. 2 Bulſt. 151, 152. Cr. Ja. 334. 1 Roll. Rep. 366.

(a) Upon the perſonal Contract.

Covenant to hold the Land for twenty Years, amounts to a Leaſe; but to enjoy the Land for twenty Years is only a Covenant.

41. A Man covenants, that the Covenantee ſhall hold the Land for twenty Years; this will amount unto a Leaſe of the Land: * But if it is that he ſhall enjoy the Land for twenty Years, this is only a Covenant. Cro. Jac. 172. pl. 13. Bro. Tit. Leaſes, 20, 30, 60. Noy 14. Cr. Ja. 42, 659. Palm. 201. 1 Leon. 118. 3 Bulſt. 252. Cr. Car. 207. 1 Jones 231. Vide Hob. 35. contra. Mo. 861. 2 Brownl. 23. 1 Roll. Rep. 397. Antea 21, 22. Poſtea 97.

* Where the Owner of the Land covenants that he ſhould hold the Land at ſuch a Rent to be paid, this will amount to a Leaſe: But where a Stranger covenants ſo, it amounts but to a bare Covenant. 3 *Bulſt.* 204. 1 *Rol. Abr.* 847. *Yelv.* 85. 1 *Brownl.* 136. *Cr. Eliz.* 223. *Bro.* Tit. *Leaſes*, 21.

Tho' the Words of an Indenture are the Words of Leſſor only, yet Leſſee accepting it, it is a Covenant to both.

42. Altho' the Words in an Indenture are in Shew the Words of the Leſſor only, yet the Leſſee accepting thereof, and enjoying of it, it is as well as if it had been a Covenant de facto. Cro. Jac. 522. pl. 7.

Although a Writing begins, *This Indenture*, and is of two Parts, yet if the Parchment is not indented, it is no Indenture. 5 *Rep.* 15. *b.* For it is the Indenting of it, and not the Word *Indenture*, which makes the Indenture.

Covenant for quiet Enjoyment, if Leſſor enters, Leſſee may bring Treſpaſs.

43. Where a Man covenants that his Leſſee ſhall quietly enjoy during the Term, without any Interruption of the Leſſor, and the Leſſor enters upon him, the Leſſee may bring Treſpaſs if he will, or Covenant if he will. Cro. Jac. 383. pl. 11. Hob. 35. Antea 10, 13, 24, 26. Poſtea 94.

Covenant to enjoy, binds not againſt wrongful Ejectment, unleſs particularly expreſſed.

44. Covenant that the Leſſee ſhall enjoy, binds not againſt a wrongful Ejector, except it be particularly againſt A. who wrongfully ejects, or expreſly againſt all Strangers. Hob. 35. Antea 2, 3, 10, 13, 24, 26, 43. Poſtea 48.

Covenant lies againſt Leſſor who had no Title, on the Word *Dimiſi*, tho' no Entry on Leſſee; but if a particular Covenant, not without Entry.

45. If any Man takes upon him to demiſe that which he hath no Title to let, an Action lies againſt him, on the Word Dimiſi, although there was no Entry upon the Leſſee; but if it was a particular Covenant, it would not lie without an Entry and

Eviction.* Hob. 12. Antea 2, 15. Poſtea 54.

Leſſor putting the Houſe into Repair, the Leſſee to keep it in Repair, are mutual Covenants.

46. In Covenant the Words were, the Plaintiff putting the Houſe in Repair, the Defendant covenanted to keep it ſo repair'd, theſe are mutual Covenants. (a) Raym. 183. Cro. Jac. 645. pl. 7. Style 140. What are mutual Covenants and what not, vide Mod. Ca. in Law & Eq. 40, 41, *69*, 70, 105, 294, 295. Antea 33. Poſtea 55.

A Suit in Chancery, no Incumbrance, but a Moleſtation, whereon Covenant lies for quiet Enjoyment.

47. A Suit in Chancery, or a Decree, is no Incumbrance upon the Land; but it is a Moleſtation to the Perſon, and an Action lies upon a Covenant for quiet Enjoyment: In what Caſe it is, and in what not, ſee Raym. 371, 373. Vide 2 Ventr. 213, 214. Antea 5.

Covenant lies only for an Ouſter by a Stranger, on older Title, or by Leſſor.

48. Per Twiſden; I never met with a Caſe where Covenant would lie, but upon an actual Ouſter, either by a Stranger, by Eigne Title, or by the Leſſor himſelf. 1 Vent. 45. Antea 2, 3, 10, 13, 24, 26, 43.

Where Leſſee covenants to repair, Plea, that he kept the Premiſſes in good Repair, except a Kitchen; which was ſo ruinous, he rebuilt it, is a good Plea in Waſte, but not in Covenant.

49. Leſſee covenanted during the Term to keep in Repair the Meſſuage demiſed: The Defendant ſays, he did, during the Term, keep all the Premiſſes demiſed in good Repair, except only a ruinous Kitchen, which, before he took the Houſe, was ſo ruinous that it could not be repaired; and he pull'd it down and rebuilt it, and hath afterwards kept it in good Repair. Held to be a good Plea in Waſte, but not in Covenant. 2 Leon. 238.

On Covenant to enjoy *ſine interruptione*, muſt ſhew the Title of the Interruptor.

50. Covenant to enjoy ſine interruptione alicujus, it muſt be ſhewn that the Party interrupting had a Title. 2 Ventr. *61*, *62*. Antea 2, &c.

Covenant not conſiſting with the Recital, does not oblige.

51. A Covenant not conſiſting with the Recital, ſhall not oblige. 2 Vent. 140. See 1 Leon. Caſe 164.

Covenant in a ſecond Indenture, not to be pleaded in Bar to a former.

52. A later Covenant by a ſecond Indenture cannot be pleaded in Bar to a former. (b) 2 Ventr. 218. Antea 33, 46.

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* A Man grants to another the Manor of *Dale*, in which he had nothing, and covenants that he had a good Right to grant, when indeed he had nothing in it; this is a Breach of Covenant. 2 *Bulſt.* 12.

(a) *Note*; I think if it had been upon the Plaintiff's putting of it in Repair, then it had been otherwiſe; becauſe that is a precedent Covenant. *Vide antea* 33. *Poſtea* 55.

(b) In reciprocal Covenants, *Utraque Pars* hath his Remedy upon Non-performance. *Jones*, Chief Juſtice, 216. *Vide* 2 *Mod.* 309. Where it is ſaid, that reciprocal Covenants cannot be pleaded one in Bar of another. See 5 *Co.* 78. 7 *Co. Ughtred*'s Caſe. *Cr. Ja.* 645. 3 *Keb.* 352. 3 *Lev.* 41, 42. 1 *Show.* 391. *Comb.* 265. 1 *Lev.* 152.

Covenant on the Words *Reddendum*, *Conceſſi* or *Dimiſi*.

53. Covenant lies upon the Word Reddendum. (a) Jones 102. Antea 2, 19, 45. 1 Roll. Abr. 519.

(a) If a Man make a Leaſe for Years, with the Word *Conceſſi* or *Dimiſi*, (which imports a Condition in Law,) if the Aſſignee or Leſſee is evicted, he ſhall have an Action of Covenant. 5 *Rep*. 17. *a*. *Vide Carth*. 98. 2 *Roll. Rep*. 339. *Palm*. 388. 1 *Roll. Abr*. 519. 2 *Leon*. 104. *Cr. Eliz*. 214. *Raym*. 257.

Words making a reciprocal Covenant, and not a Condition.

54. Words making a Covenant reciprocal, tho' not a Condition. Jones 205. Antea 33, 46.

Covenant by Attorney for quiet Enjoyment amounts to a Leaſe.

55. An Attorney covenants on the Behalf of another, that the Covenantee ſhall quietly enjoy ſuch Land, at ſuch a Rent, for a Year: Adjudged, that this Covenant amounts to a Leaſe, tho' made by a Stranger; for he acted on Behalf of the Owner of the Land, and it ſhall be taken that he had Authority to demiſe. 2 Vent. 62.

*Note*; The Attorney muſt covenant in the Name of the Party for whom he acts, not in his own Name. 9 *Rep*. 77. *a*.

Eviction of Leſſee diſcharges Rents, Bonds and Covenants.

56. Upon an Eviction of Leſſee for Years, all Rents, Bonds and Covenants depending thereupon are gone. Yelv. 23. So where the principal Thing to be performed is void. 1 Sid. 309. Yelv. 19. Style 357.

The Diverſity where a Covenant for quiet Enjoyment is general, and where ſpecial.

57. There is a Diverſity where a Covenant for quiet Enjoyment is general, and where ſpecial; for where the Covenant is for quiet Enjoyment againſt A. B. the Covenantor ought to defend againſt the Entry of A. B. be it by good Title or by wrong; but where it is without the Diſturbance of any Perſon, there, if there is any Entry upon the Plaintiff, he muſt ſhew that the Party who entered had a Title. Owen 100. Antea 2, 3, 10, 13, 24, 26, 43, 48.

*Nihil habuit in Tenementis*, no Plea in Covenant for a Sum in Groſs.

58. A. agrees to demiſe to B. a certain Houſe at a certain Rent, and with the uſual Covenants in Demiſes; for which the Covenantee agreed to pay 100 l. at Michaelmas. The Defendant pleads, That the Plaintiff tempore quo, nihil habuit in tenementis prædictis. Curia: Though this may be pleaded in an Action of Debt for Rent, * yet in Covenant for a Sum in Groſs, it cannot. 2 Ventr. *99*.

* Where it is by Leaſe parol, not where it is by Leaſe under Hand and Seal.

Covenant to build three Houſes, and to keep them in Repair, and builds four, the Covenant to repair extends to all.

59. The Leſſee covenants to build three Houſes upon the Premiſſes, and keep them in Repair, and deliver up the Premiſſes, ac domos & ædificia ſuperinde erect. well repaired: He builds four, and lets one fall to decay; the Covenant extends as well to the other

Houſe, as to the three which were agreed to be built. 2 Vent. 128. Vide 3 Lev. 264, 265.

Leaſe excepting the Trees, and Liberty to cut them down, and carry away, repairing the Hedges; this is not a Condition, but a Covenant.

60. A. lets to B. excepting the Trees, and Liberty to cut down and carry them away, repairing the Hedges and filling of the Holes. Repairing the Hedges and filling the Holes is not a Condition, but a Covenant, for which the Leſſee hath his Remedy by Action. But it doth not (upon the Non-performance) avoid the Covenant. Jones 206. March 9. 2 Roll. Rep. 466.

Covenant to enjoy paying the Rent, is not a Condition, but a reciprocal Covenant.

61. Alſo a Covenant was, That the Defendant ſhould quietly enjoy the Lands let, paying the Rent reſerved; and it was pleaded, That the Defendant had not paid the Rent reſerved, whereby the Leaſe became void: But adjudged, That the Word Paying did not make the Covenant conditional, but that it was a reciprocal Covenant, for which the Party may have an Action. Jones, Chief Juſtice, 206.

Covenant by Leſſee if he, &c. alien his Term, Leſſor may enter, is no Condition.

62. Leſſee covenants and grants with the Leſſor, That if he, his Executors or Aſſigns, ſhould alien the Term, then the Leſſor and his Heirs might enter; the Leſſee makes his Wife Executrix and dies; ſhe takes Husband who aliens the Term; it was ſaid, that this is not a Condition, for a Condition cannot be made by none, but of the Part of the Leſſor, Feoffor or Donor; for the Condition is annexed to the Thing given in the Leaſe. Dy. 6. a. b.

Where Condition is that Leſſee or his Aſſigns ſhall not alien, if the Adminiſtrator grants, the Condition is broken.

63. Where the Condition is, That the Leſſee or his Aſſigns ſhall not grant over the Term, if his Adminiſtrator grants, he is Aſſignee, and the Condition is broken. * Dy. 6.

* This is a Condition, and not a Covenant as the former Caſe is.

The Husband may ſell the Wife's Leaſe.

64. Where the Wife hath a Leaſe for Years, as Executrix, or otherwiſe, the Husband may ſell it. Dy. 7. 7 H. 6. 1. b. Bro. 24. Co. Litt. 46, 351.

Covenant that Leſſee may take Thorns by Aſſignment, he may take them without; *Secus* on Covenant not to take Thorns without Aſſignment.

65. In a Leaſe for Years, the Leſſor covenants that he ſhall have Thorns for Hedges, by Aſſignment of the Leſſor's Bailiff. The Queſtion was, Whether he may take Thorns without Aſſignment? The better Opinion ſeemed to be, That he might; for that it is no more than the Law gives him: But if it had been, that he ſhould not take Thorns without Aſſignment, then econtra. Dy. 18. b.

Leaſe for Years *ſans* Covenant to enjoy by Tenant for Life, who dies before the Term ends; on Entry of Reverſioner, Covenant lies not on the Demiſe in Law.

66. Tenant for Life leaſes, † but there are no Covenants in it for Enjoyment, and dies before the End of the Term; he in Reverſion enters upon the Leſſee,

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† Tenant for Life leaſes, and covenants that the Leſſee ſhall enjoy the Land, and he afterwards commits a Forfeiture; he ſhall be bound by this Covenant. 3 *Bulſt.* 203.

A Parſon covenants that another ſhall enjoy his Land for 21 Years, and he afterwards reſigns, he ſhall be bound by this Covenant. 3 *Bulſt.* 203.

and evicts him. And he brings Covenant upon the Covenant in Law againſt the Executor of the Leſſor; it doth not lie, becauſe the Covenant in Law ended and determined with the Eſtate and Intereſt of the Leſſee: (a) But if it had been an expreſs Covenant, it had continued. Dy. 257. a. b. Antea. 1 And. 12. Mo. 74. pl. 204. Bendl. 150. 1 Brownl. 22.

Covenant to repair on a Penalty: Default of Repair by Means of Thunder; Leſſee is excuſed of the Penalty, but muſt repair.

67. Where there is a Covenant for the Leſſee to repair upon a Penalty, and there is a Default of Repairs by Means of Thunder, Lightning, Inundation, or any other ſuch like Accident, the Leſſee ſhall be excuſed of the Penalty: But yet, becauſe of his Covenant, he is bound to repair in convenient Time. Dy. 33. a. pl. 101, 324. a. pl. 341.

Every Covenant implies an Agreement.

68. Every Covenant implies an Agreement. Dy. 57. a. Vide 1 Vent.

Where the Covenant extends to a Thing *in eſſe*, Part of the Demiſe, to be done, it ſhall bind the Aſſignee.

69. When the Covenant extends to a Thing in eſſe, Parcel of the Demiſe, the Thing to be done by Force of the Covenant, is quodammodo annexed and appurtenant to the Thing demiſed, and ſhall run with the Land, and bind the Aſſignee, (b) though he is not bound by expreſs Words.

But when the Covenant extends to do a Thing not *in eſſe* at the Time of the Demiſe, it ſhall not bind an Aſſignee.

But when the Covenant extends to a Thing, which had not Eſſence at the Time of the Demiſe, this cannot be appurtenant or annexed to the Thing which had not Eſſence; as where a Man covenants to keep the Houſe demiſed in good Repair during the Term, this is for the Support of the Thing demiſed, and quodammodo annexed and appurtenant to the Houſe, and ſhall bind the Aſſignee, though he is not expreſly bound by the Covenant. But where the Covenant (c) is to erect a new Brick-Wall upon the Premiſſes, or any other new Thing which was not in eſſe, this Covenant ſhall bind the Leſſee, his Executors and Adminiſtrators, but not the Aſſignee. (a) 5 Rep. 16. a. b. 1 Roll. Abr. 521. Cr. Eliz. 457. 1 Lev. 109. 1 Sid. 157. Ray. 80. Mo. 399. Cr. Eliz. 457. Godb. 270. Cr. Ja. 125. Poſtea 78.

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(a) Tenant for Life leaſes for Years, the Leſſee aſſigns over all his Eſtate, to hold *in tam amplis modo & forma*, as he ought to hold it; ſhe dies, he in the Reverſion enters, and the Bargainee brings Covenant againſt the Bargainor: This is only a Grant or Aſſignment of his Intereſt, which determines with the Eſtate. *Cro. Eliz.* 157. *pl.* 42. 1 *Leon.* 179.

(b) It lies either againſt the Aſſignee at the Common Law, or againſt the Leſſee. *Roll. Abr.* 522. *Cr. Eliz.* 457.

(c) Concerns a Thing not *in eſſe* at the Time of the Demiſe made.

(a) For the Law will not annex a Covenant to a Thing which had not Eſſence. 5 *Rep.* 16. *b.*

But where Leſſee covenants for him and his Aſſigns, to do a new Thing on the demiſed Premiſſes, it ſhall bind his Aſſigns.

70. But if the Leſſee had covenanted for him and his Aſſigns, to build a new Wall upon Part of the Thing demiſed, this being to be done upon the Land, ſhall bind his Aſſigns; for although the Thing to be done is a new Thing, yet it being to be done upon the Land demiſed, and the Aſſignee being to have the Benefit of it, and being alſo bound by expreſs Words, this ſhall bind the Aſſignee. 5 Rep. 16. b.

Tho' the Covenant is for the Leſſee and his Aſſigns, yet if the Thing to be done is collateral to the Land, it ſhall not bind his Aſſignee.

71. But although the Covenant be for him and his Aſſigns, yet if the Thing to be done is merely collateral to the Land, and doth not touch or concern the Thing demiſed, as a Covenant (b) to build a new Houſe upon the Leſſor's Lands upon Part of the Demiſe, or to pay a collateral Sum to the Leſſor or a Stranger, this ſhall not bind the Aſſignees. Ibid. Cr. Ja. 438.

(b) For him and his Aſſigns.

So a Covenant on a Demiſe of Sheep, ſhall not bind the Aſſignee.

72. Alſo if a Man demiſe a Flock of Sheep, &c. for any Time, and the Leſſee covenants with him and his Aſſigns, at the End of the Time to deliver the Cattle, or as good as thoſe, or ſo much Money for them; the Leſſee aſſigns over theſe Cattle, this Covenant ſhall not bind the Aſſignee, becauſe it is a perſonal Contract; (c) and there wants ſuch Privity, as there is between the Leſſor and Leſſee and his Aſſigns of Land, in reſpect of the Reverſion. 5 Rep. 17. a. But where ſuch an Aſſignee may be made liable in Equity, vide 2 Vern. 423.

(c) And not aſſignable, *viz.* being only a Choſe in Action. *Vid. poſtea* 80.

If Leſſee covenant to repair, it ſhall bind all, whether they come in by Act of Law or of the Party.

73. Alſo if Leſſee for Years covenants to repair during the Term, this ſhall bind all others as a Thing appurtenant, and which runs with the Land, whether they come in by Act in Law or of the Party. 5 Rep. 17. b. 1 Roll. Abr. 522. Cr. Car. 221. 1 Jones 245. 1 Lev. 109. 1 Sid. 157. Raym. 80. Carth. 519. Bro. Covenant, 32. 1 Jones 223. Cr. Car. 523.

Aſſignee of Leſſee on the Word *Conceſſi* or *Dimiſi* may have Covenant.

74. If a Man makes a Leaſe for Years, with the Word Conceſſi or Dimiſi, which import a Covenant; if the Aſſignee of the Leſſee be evicted, he ſhall have Covenant thereupon. 5 Rep. 17. a. 1 Roll. Abr. 521. Dyer 257. 4 Co. 80. Antea 2, 45, 54.

The Aſſignee of an Aſſignee, or Executor of an Aſſignee of an Aſſignee, or Aſſignees of Executors ſhall have Covenant.

75. The Aſſignee of an Aſſignee ſhall have Covenant, as ſhall alſo the Executors of the Aſſignee of an Aſſignee; ſo of the Aſſignees of Executors or Adminiſtrators of every Aſſignee; for all are comprehended under the Word Aſſigns. 5 Rep. 17. b. Carth. 519.

Where the Covenantees are to have a ſeveral Intereſt or Eſtate, the Words, *cum eorum quolibet*, make the Covenant ſeparate.

76. When it appears by the Covenant, that every of the Covenantees had or is to have a ſeveral Intereſt or Eſtate, (a) there, when a Covenant is made with the Covenantees, & cum eorum quolibet, the Words cum eorum quolibet make the Covenant ſeparate in reſpect of their ſeveral Intereſts; as if a Man demiſe Black-acre to A. White-Acre to B. and Green-acre to C. and covenants cum eorum quolibet, that he is lawful Owner of all the ſaid Acres; here, in Reſpect of their ſeveral Intereſts, the Covenant is ſeveral: But if he demiſes the Acres to them jointly, then theſe Words, & eorum cuilibet, are void. 5 Rep. 19. a. 1 Show. 8.

(a) Antea 9.

An Intereſt cannot be granted jointly and ſeverally. But a Power may be joint and ſeveral.

77. An Intereſt cannot be granted jointly and ſeverally; for if a Man makes a Leaſe to two jointly and ſeverally, the Word Severally is void, and they ſhall hold jointly: But a Power to make Livery, or to ſell, &c. may be joint and ſeveral; for they have not any Intereſt, but are only as Servants to others.* 5 Rep. 19. a.

* Note the Difference between an Intereſt and a Power.

Leſſee covenants for himſelf and Executors, (without the Word *Aſſigns*,) to repair. Covenant, will lie againſt his Aſſigns.

78. Leſſee for Years covenants for himſelf and his Executors, (ſans the Word Aſſigns) to repair; he aſſigns, and an Action of Covenant for Repairs is brought againſt his Aſſignee, and held to be good. For though the Leſſee hath not covenanted for his Aſſigns, yet ſuch Covenants, as extend to the Support of a Thing demiſed, are quodammodo appurtenant thereunto, and run with the Land; and in Reſpect that the Tenant hath taken upon him the Repairs, the annual Rent is the leſſer, and qui ſentit commodum ſentire debet & onus. † 5 Rep. 24. b.

† Alſo Covenant lies againſt the Leſſee himſelf after the Aſſignment. *Cr. Ja.* 523.

Sale of 600 Cord of Wood, to be aſſigned out of ſuch a Wood; Vendee aſſigns his Intereſt; Vendor ſells 1000 Cord to another at the Vendee's Election.

79. A. ſells to B. and his Aſſigns 600 Cord of Wood in ſuch a Wood, to be there taken by Aſſignment of the Vendor; the Vendee aſſigns his Intereſt to J. S. afterwards the Vendor ſells 1000 Cord to another, to be taken out of the ſame Wood at the Election of the Vendee: Then A. aſſigns the 600 Cord, J. S. cuts them down; and the ſecond Vendee takes them, but not lawfully. For the firſt Vendee had ſuch an Intereſt, as he might aſſign, and not a Choſe in Action or Poſ-

ſibility; (a) for if the Vendor ſhould refuſe to aſſign them to the Vendee upon Requeſt, the Vendee may take them without Aſſignment; and the Grantor cannot by his own Act ſubvert or derogate from his own Grant. 5 Rep. 24. b. 25. a. Mo. 691. pl. 955. 2 Roll. Abr. 47.

(a) *Vide antea* 73. A Choſe in Action or Poſſibility are not aſſignable. *Vide Lucas* 164, 245, 289. Where and how far they have been held aſſignable.

If the Vendor or a Stranger cuts down any Trees, the Vendee of Wood cannot take them, but muſt ſupply himſelf out of the reſt.

80. Alſo admitting the Aſſignment to the Plaintiff to be void; yet after the Trees are cut down, the ſecond Vendee could not take them: As if a Man grant to me two Cord of Wood, to be taken at my Election; and the Grantor or a Stranger cuts down any Trees; I cannot take theſe, but muſt ſupply my Grant out of the Reſidue. 5 Rep. 25. a.

May reſerve ſeveral Rents out of a Demiſe.

81. Upon a Demiſe, ſeveral annual Rents may be reſerved by apt Words. The Reſervation of Rent is not of the Subſtance of the Leaſe; for a Leaſe may conſiſt without any Reſervation, * either for Part or for all. 5 Rep. 55. a. Poſtea 83, 84.

* Except in Caſe of Leaſes by Tenants in Tail, &c. according to the Stat. 32 *H.* 8.

Leaſe of three Manors, reſerving Rent out of one.

82. So if a Man leaſes the Manors of A. B. and C. for twenty-one Years, rendering Yearly out of the Manor of B. 10 l. Here the Manor of B. is ſolely chargeable with this Rent, and the others are not, neither is it incident to the Reverſion of any but that. Ibid.

83. Alſo here the Leſſor might have reſerved 10 l. per Ann. out of the Manor of A. during five Years, and 10 l. out of the Manor of B. during ten Years, and 10 l. out of the Manor of C. for ten Years, to commence ten Years after. And one may be upon a Condition precedent, another upon a Condition ſubſequent, and the third abſolute. 5 Rep. 55. a. And here the Leſſor cannot diſtrain in one for the Rent of another of them. Antea 81, 82.

Rendring Rent to a Prior or his Succeſſors, is all one as and Succeſſors.

84. Rendring Rent yearly, during the Term, to a Prior and his Succeſſors; or thus, to the Prior or his Succeſſors, is all one. 5 Rep. 112. a.

Leaſe dated in *January*, rendring at *Michelmas* and *Lady-day*, the laſt Words ſhall be tranſpoſed.

85. If a Leaſe is dated in January, rendring Rent yearly, during the ſaid Term, at Michaelmas and Lady-day, theſe laſt Words ſhall be tranſpoſed, and the Conſtruction ſhall be at Lady-day and Michaelmas. 5 Rep. 111. b. 112. a.

Where Rent is reſerved at the uſual Feaſts, or thirteen Days are expired.

86. Where Rent is reſerved payable at the four moſt uſual Feaſts, viz. the Feaſts of St. Michael, &c. or within thirteen Days after; if the Rent is not paid upon

the firſt Feaſt-day, (as it may, if the Leſſee pleaſes,) it is not due, neither can it be ſued for until the thirteen Days expire: For the Diſjunctive is added for the Benefit of the Leſſee, and it is more for his Benefit to have the laſt Day than the firſt. 10 Rep. a. b. 128.

Leaſe for Years rendring Rent, Proviſo, if in Arrear, to enter. If the Leſſor demands the Rent, and it is not paid, and after accepts the Rent before Re-entry, he diſpenſes with the Condition.

87. When a Leaſe for Years is made rendring a Rent, and there is a Proviſo, That if the Rent be in Arrear, it ſhall be lawful to enter; here, if the Leſſor demands the Rent, and it is not paid, if he afterwards accepts the Rent, (before his Re-entry,) for Rent due at a Day afterwards, he hath diſpenſed with the Condition: But if the Rent was afterwards paid for that Quarter, for which the Demand was made, (a) yet he may re-enter; for as well before as after his Re-entry, he might have his Action of Debt (b) for that Rent. 3 Rep. 64. b.

(a) No Re-entry having been made.

(b) For it is not the Demand and Rent behind barely, that avoids the Leaſe, but the Re-entry thereupon.

So if Leſſor diſtrains after the Demand, he affirms the Leaſe.

88. So alſo, if the Leſſor diſtrains for Rent after the Demand, he hath affirmed the Leaſe to be in Being; for a Man cannot diſtrain for Rent after the Term ended. 3 Rep. 64. b.

Where a Leaſe for Years concludes, that the Leaſe ſhall be void, no Acceptance of Rent can make it good.

89. In a Leaſe for Years if the Concluſion is, That the Leaſe ſhall be void, no Acceptance of the Rent due, at any Day after the Breach of the Condition will make the void Leaſe good. (a) 3 Rep. 64. Vid. Cro. Car. 511, 512. pl. 6.

(a) Where the Concluſion of a Condition in a Leaſe for Years is, that then the Leaſe ſhall be void, there no Acceptance of the Rent due at any Time after the Breach of the Condition, will make the void Leaſe good: For a Leaſe which is *ipſo facto* void by the Breach of a Condition, can never be made good by any Acceptance afterwards.* 3 *Rep.* 64. *b.* See for this in Title *Leaſes*, and Title *Conditions*.

* *Contra* of a Leaſe voidable by Entry. 3 *Rep.* 64. *b.*

But in a Leaſe for Life, which cannot be avoided before Entry, Acceptance of Rent bars the Re-entry.

90. But a Leaſe for Life which commences by Livery, cannot be avoided before Entry; and the Acceptance of a Rent due at a Day afterwards † ſhall bar the Leſſor of his Re-entry. 3 Rep. 64. b. 65. a.

† And before Entry, not after.

If a Parſon, &c. leaſes, rendring Rent and dies, tho' the Succeſſor accepts the Rent, it is void.

91. If a Parſon, Vicar, or Prebendary make a Leaſe for Years, rendring Rent, and dies, the Succeſſor accepts the Rent, this ſignifies nothing; for the Leaſe was void by his Death: It is otherwiſe in Caſe of

But if a Biſhop leaſe for Years and die, if the Succeſſor accepts the Rent, he ſhall never avoid it.

of a Leaſe for Life. (a) But if a Biſhop, Abbot, Prior, &c. leaſe for Years and die; if the Succeſſor accepts the Rent, he ſhall never avoid the Leaſe. 3 Rep. 65. a. Br. Tit. Acceptance 9, 10. 20, 26. Tit. Confirmation 21. Tit. Dean 20. Tit. Leaſes 18, 19, 32, 33, 52. F. N. B. 50. Plowd. 264. Cr. Eliz. 18. Poph. 121. Dyer 46, 239. Co. Litt. 45. b. 102, 341. 6 Co. 8. a. Hetl. 88. 1 Roll. Abr. 481. 1 Roll. Rep. 361. Bridgm. 94. Raym. 166. 2 Keb. 325.

What Leaſes for Lives and Years Biſhops, &c. may make.

(a) Biſhops and Spiritual Perſons, ſeized in Fee in Right of their Churches, may make Leaſes for three Lives, or one and twenty Years, having all the Qualities required by Statute in the Caſe of Leaſes made by Tenants in Tail; And Leaſes otherwiſe made are void againſt their Succeſſors. Statute 32 *H.* 8. *cap.* 18. 3 *Rep.* 59.

Acceptance of Rent demanded, affirms the Leaſe for Life.

92. And per Coke, The accepting of the Rent which was demanded, hath affirmed the Leaſe: For he cannot receive it as due upon any Contract, but he ought to receive this as a Rent, and then he affirms the Leaſe to continue. 3 Rep. 65. a.

A Bond to perform Covenants is as well broke on Breach of a Covenant in Law as expreſs Covenant.

93. A Bond to perform Covenants is broken upon the Breach of a Covenant in Law, as well as if it had been an expreſs Covenant. 4 Rep. 80. b.

Recovery by Verdict, no Breach of Covenant in Law for quiet Enjoyment.

94. Recovery by Verdict is no Breach of the Covenant in Law, for quiet Enjoyment, unleſs the Plaintiff ſhews, That the Perſon who recovered had an eigne Title. Ibid. Cr. Ja. 315. 1 Mod. 298. 3 Mod. 135. 1 Vent. 84. 2 Lev. 37. Sed 3 Lev. 325. 1 Mod. 66. videtur contra. Antea 2, 3, 13, 24, 26, &c.

An expreſs Covenant qualifies a Covenant in Law.

95. An expreſs Covenant ſhall qualify the general Covenant in Law, and reſtrain it by the mutual Conſent of the Parties, ſo that it ſhall not extend farther than the expreſs Covenant. Ibid. Antea 1.

Leſſee covenants to repair, and after builds a Barn, he muſt keep it in Repair.

96. The Leſſee covenants to repair the demiſed Premiſſes as often as need ſhall require; a Barn is built upon the demiſed Premiſſes after the Covenant entered into, which is pleaded by the Defendant in an Action of Covenant; and upon a Demurrer it was held, That the Tenant ſhall repair it, though built after the Covenant made. Brown and Blundel, 34 Car. 2. Rot. 752. 3 Lev. 265. Skin. 121.

The Word *Covenant* makes a Leaſe though the Word *Grant* is omitted; ſo Licence for a Time without either.

97. The Word Covenant will make a Leaſe, though the Word Grant is omitted. 1 Leon. 136, 303. Cr. Eliz. 1, 173. Owen 97. 1 Roll. Abr. 847. Fitz. Tit. Aſſize, pl. 412. Nay a Licence * to hold for a Time, without either of thoſe Words, will amount to a Leaſe. 2 Mod. Rep. 80. 5 H.

* *Quære* as to a Licence.

7. 1. 1 Leon. 129. 3 Bulſt. 252. 1 Sid. 428. 1 Mod. 14. 2 Keb. 561. 2 Lev. 194. 3 Keb. 761. Hard. 366. See 3 Bulſt. 204.

How it is where the Leaſe is to be made, as Counſel ſhall adviſe.

98. Where a Leaſe is to be made as Counſel ſhall adviſe, this ought to be the Counſel of him who is to have the Leaſe. 3 Bulſt. 168.

The Difference between an expreſs Covenant and a Covenant in Law.

99. When the Covenant is created by Law, the Covenantor cannot have Covenant, if he be not ouſted by one that hath a Title; but otherwiſe it is upon an expreſs Covenant. 2 Brownl. 161.

A Parol Diſturbance is no Breach of a Covenant, but there muſt be ſhewn a ſpecial Diſturbance.

100. A Parol Diſturbance is no Breach of a Covenant, but there muſt be a ſpecial Diſturbance ſhewn. 8 Rep. 91. a. b.

# Deviſes. See Expoſition of Wills.

Deviſe what.

A Deviſe is properly where a Man gives away any Lands or Tenements by Will in Writing. Co. Litt.

No Deed, but an Inſtrument to convey Lands, and not at Common Law.

And a Deviſe is in Law-Conſtruction no Deed, but an Inſtrument by which Lands are conveyed: And anciently, where Land was deviſable, it was by Cuſtom only; for at Common Law, no Lands or Tenements in Fee-ſimple might be deviſed by Will. (a) But now it is otherwiſe by Statute 32 H. 8. 1 Co. Inſt. 111. 2 Inſt. 386.

(a) Nor could they be transferred but by ſolemn Livery and Seiſin, Matter of Record, or ſufficient Deed. 1 *Roll. Abr.* 608.

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A Will to paſs Land muſt be in Writing, ſigned and ſealed by the Party in the Preſence of three Witneſſes, who muſt ſet their Names thereto in the Deviſor's Preſence.

A Will to paſs Land muſt now (b) be made in Writing, and be ſigned and ſealed by the Party in the Preſence of three or more credible Witneſſes, who muſt ſet their Names thereto as Witneſſes in the Preſence of the Deviſor, otherwiſe the Will to be void. (c)

(b) By Virtue of the Statute of *Frauds and Perjuries*, 29 Car. 2. *cap.* 3.

*Per.* 29 *Car.* 2. *cap.* 3.

A Will in Form of an Indenture.

(c) A Deed indented was made between the Father and the Son, where the Father agreed to give the Son ſuch Lands; and the Son agreed to pay ſuch Debts; and there were ſome particular Expreſſions reſembling the Form of a Will, as *being ſick of Body*; and did give all his Goods and Chattels; and the ſame was ſealed and delivered, and proved that it was intended by him to be his Will; and the Court held it a good Will. 1 *Mod. Rep.* 117.

A Man may deviſe his Eſtate at Pleaſure, by Statute.

A Man by the Statute of Wills, † 32 H. 8. cap. 1. may deviſe his Eſtate at his Will and Pleaſure, viz. upon Condition, upon Limitation, or any Way that the Law allows. 1 Mod. Rep. 312.

† 32 *H.* 8. *cap.* 1.

How Wills ſhall be conſtrued.

**A Will muſt be conſtrued (a) as near the true Meaning of it as may be.** 1 Saund. 184. Lucas 502.

(a) Conſtructions of Wills ought to be collected from the Words, and not (*dehors*) or by any Averment. *Raym.* 410, 411. See the Rules of Conſtruction of Words in Wills, *Mod. Ca. in Law & Eq.* 123, 4, 5. If collateral Averments can be admitted in Caſe of a Will, there can be no Certainty, for then a Will may be any Thing, every Thing, Nothing. 1 *Mod. Rep.* 310.

How Conſtructions of Wills ought to be.

A Deviſe muſt be of Lands in Fee-ſimple, or Chattels; intailed Lands cannot be deviſed. *Co. Litt.* 111. *a.*

A Deviſe muſt be of Land in Fee, not of Lands intailed.

If a Man ſeized in Fee of Lands, deviſes the ſame in Fee, Fee-tail, or for Life; here the Deviſee ſhall enter without any Appointment of any Perſon; * For the Freehold and Intereſt is in the Deviſee before his Entry. *Co. Litt.* 111. *a.* And to this Deviſe there needs no Attornment of any Leſſee or Tenant. *Co. Litt.* 112. *a.*

* In Caſe of Goods it is otherwiſe. *Co. Litt.* 111. *a.* there it muſt be by Conſent of the Executor.

Deviſee of Lands ſhall enter without Appointment.

Deviſe of Goods is otherwiſe.

Where the Eſtate of the Deviſor is turned to a Right at the Time of his Death, and in the Pleading it is not ſaid that he died ſeized, &c. a Will will not operate upon it. 1 *Mod. Rep.* 217. 1 *Salk.* 237. *Cr. Eliz.* 530. *Fitz-Gib.* 225 *to* 246.

A Right to an Eſtate cannot be deviſed.

Two Grounds for the Expoſition of Wills.

**There are two main Grounds in the Law for the Expoſition of Wills.** Hob. 32.

1. To be taken according to the Intent of Deviſor.

**1. That the Deviſe muſt be taken according to the Intent of the Party deviſing; as a Deviſe of Lands to Two, equally to be divided, makes a Tenancy in Common.** 3 Rep. 39. b. 2 Roll. Abr. 90.

2. The Intent to be ſo expreſſed, it may be certain to the Court, and not againſt Law.

**2. That ſuch Intent muſt be ſo expreſſed in the Will written, that it may be certain to the Court, and not againſt Law.** (b) Hob. 32. 6 Rep. 17. 1 Rep. 85. b. Jones, Chief Juſtice, 112, 114. Modern Caſes 106 to 113. Lucas 502.

(b) Deviſes ought to be governed by the Intent of the Deviſor, whether the ſame be expreſſed by apt Words, or no. Chief Juſtice *Jones* 112, 172. *Raym.* 428. *Co. Litt.* 6. *b.* 1 *Bulſt.* 222. *Bendl.* 11. *Mo.* 57. *Lucas* 420, 523.

Muſt be governed by the Intent of the Deviſor, tho' not expreſſed by apt Words.

Deviſes and Uſes are alike, and the ſame Favour as is given to one, ought to be given to the other; and in Deviſes the Intent of the Parties is to be conſidered: So alſo in the Caſes of Uſes. *Litt. Rep.* 347.

Deviſes and Uſes are favoured alike.

Expoſition of Wills, more favour'd than other Deeds, and why.

**And Wills are more favoured in Law than any other Conveyance, (c) becauſe Teſtator is intended to be in a Hurry; and a Deviſe is not a Conveyance**

(c) To fulfil the Intent of the Teſtator; in order to which, the Words may be differently

To fulfil the Teſtator's Intent.

ance by the Common Law, but by the Statute: And as Wills before the Statute were by Cuſtom, which exempted them from the Regularity and Propriety required in other Conveyances; ſo Deviſes upon the Statute, in Imitation of thoſe by Cuſtom, gained a like favourable Interpretation. 3 Salk. Rep. 127, 128.

ferently conſtrued from thoſe in other Deeds: But the Words and Intent muſt agree with the Law. *Plowd.* 162. *Hob.* 34. 1 *Williams* 20.

A Deſcent cannot be directed by Deviſe againſt the Rules of Law.

Although a Deviſe may create an Inheritance by other Words than a Gift can, yet a Deviſe cannot direct an Inheritance to deſcend againſt the Rules of Law. *Co. Litt*, 25. *a*. 18.

Such Eſtates as cannot be convey-ed by the Party by Advice of Counſel cannot be deviſed.

It is a Rule, That ſuch Eſtates as cannot by the Rules of the Common Law be conveyed by Act executed by the Party in his Life-time, by Advice of Counſel, cannot be deviſed by Will, which is intended in Law to be inops Conſilii. 1 Rep. 85. b. For a Man cannot diſpoſe of his Eſtate in Fee to one, and that if he doth not ſuch an Act his Eſtate ſhall ceaſe, and it ſhall go to another in Fee. (a) For when he hath diſpoſed of it in Fee, he hath no Power to diſpoſe of it over. 1 Rep. 85. b. Alſo per Rokeby in Canc. inter Lloyd and Carew, Mich. 9 Will. Regis. Dyer 81. Plowd. 29. 2 Leon. 69. Co. Litt. 19. Poph. 34. 2 Roll. Rep. 220. Godolp. 355. Lucas 422, 423.

(a) *Note*; I take it, that there is a Difference when the Deviſe is paying ſo much Money, or doing ſuch an Act; for paying ſo much Money is a Condition precedent.

May deviſe to the Uſe of another.

A Deviſe may be to the Uſe of another, and good. (b) 2 Vent. 314. Poph. 4.

Lands may be deviſed to an Uſe.

(b) Land may be deviſed to an Uſe, tho' the Statute of Wills is ſince the Statute of Uſes. 2 *Vent*. 314. *Moor* 107.

Deviſe that A. and B. his Feoffees ſhould ſtand ſeized to the Uſe of C. Tho' no Feoffees, yet good.

A Man deviſes thus: *I deviſe, that* A. *and* B. *my Feoffees ſhall ſtand and be ſeized to the Uſe of* C. D. *for Life, Remainder over*; and indeed he had no Feoffees, but however held a good Deviſe, by Reaſon of the Intention. *Poph.* 188.

A Deviſe will lodge the Eſtate, tho' no Eſtate is limited.

A Deviſe implies a Conſideration, and will lodge the Eſtate in the Deviſee, if no Uſe be limited upon it. 2 Vent. 312.

Words in a Will which diſinherit an Heir, muſt be clear and not doubtful.

Where there are Words in a Will, which ſhall diſinherit the Heir at Law, they muſt have a clear and apparent Intent; and not be any Way ambiguous or doubtful. Jones, Chief Juſtice, 114. 1 Mod. Rep. 189, 190. 6 Rep. 17. a. Vaugh. 261. Cro. Car. 369. pl. 5. And the Intent ought to be collected out of the Words of the

**Will, and not from any Foreign Intendment or Averment.** Ibid.

**Where they are of an ambiguous or doubtful Conſtruction, they ſhall never be interpreted to diſinherit the Heir.** Vaugh. 268.

Neceſſary Implication, *Quid?*

**It muſt be a neceſſary** (a) **not conſtructive Implication, to diſinherit an Heir at Law.** (b) **A neceſſary Implication is, where** A. **muſt have the Thing deviſed, or no Body elſe; as where a Man deviſes to his Heir at Law his Land in** D. **after his Wife's Death; here the Wife or no Body muſt have the Land during the Heir's Life, by Implication, becauſe the Heir, by expreſs Deviſe, cannot take by Implication till after the Wife's Death.** Vaugh. 262, 263. Raym. 453, 454. 3 Lev. 260. 1 Roll. Abr. 843. 13 H. 7. 17. b. Cr. Ja. 75. Bro. **Tit.** Deviſe, 52. 2 Sid. 53. 2 Lev. 207. Lucas 520, 525.

(a) 6 *Co.* 17. *a.*

No Eſtate can riſe by Deed, by Implication, But may by Will.

(b) No Eſtate by Implication can riſe by Deed only. 1 *Vent.* 379. But by Will it may. *Raym.* 453.

A Deviſe after the Death of himſelf and Wife, to *J. S.*

The Land deſcends to the Heir at Law, during the Life of the Deviſor's Wife, by Implication.

A Man deviſed after the Death of himſelf and Wife to *J. S.* and his Heirs, (*J. S.* not being his Heir,) and dies; and it was held, that the Land deſcended to the Heir at Law during the Life of the Deviſor's Wife, and that ſhe had not an Eſtate for her Life by Implication. *Jones* C. J. 98. *Br. Deviſe*, 52. *Cr. Ja.* 72.

In all executory Deviſes, the Lands deſcend until the Contingencies happen.

In all Caſes of executory Deviſes, the Eſtates deſcend until the Contingencies happen; as where a Man deviſes to *A.* ſix Months after his Deceaſe, the Land deſcends in the mean Time. 1 *Lutw.* 798. So where a Man deviſes to his Heir at Law, paying ſuch Legacies, and for Defect thereof, Remainder over; the Heir, till Default, is in by Deſcent, and the other's Intereſt is by Way of executory Deviſe. *Per Holt* Ch. J. *Modern Caſes* 241. 5 *Co.* 21. *a.* *Cr. Eliz.* 833, 359, 204. *Palm.* 135. *Dyer* 33. *Cr. Ja.* 592. *Owen* 112. 2 *Mod.* 7. 1 *Lut.* 809. 3 *Mod.* 32.

A Deviſe to the Heir, and if he die without Iſſue Male, then, &c.

**A Man deviſes thus,** My Will is, that all my Lands ſhall come to *John* after my Deceaſe, (who was his Heir) and if it happen that he die without Iſſue Male, then, &c. * **This is an Eſtate-tail in** John, **by Implication.** Hob. 30. 1 Vent. 230.

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* Nay, if the Words had been, *That if he had died without Heir Male*, then, &c. and had not ſaid, *of his Body*, it is an Eſtate-tail, the Law ſupplying the Words, *of his Body*. *Br. Deviſe*, 1. *Co. Litt.* 9. *b.* 25. *a.* 27. *a.* *Hob.* 33. 1 *Vent.* 228, 229. But if it were a Gift, or Feoffment, it would be a Fee-ſimple, becauſe it is not limited by the Gift of what Body the Iſſue Male ſhould be. *Cr. Eliz.* 478. *Mo.* 224. 7 *Co.* 41. *Litt. Rep.* 344. *Plowd.* 541. 3 *Leon.* 5. *Hob.* 32, 37. 2 *Sid.* 41. See *Litt. Sect.* 31. and *Co. Litt.* 27. *a.*

Deviſe to his Wife, to be diſpoſed of by her, to ſuch of his Children as ſhe ſhall think fit. She hath only a nominating and directing Power.

Where a Man deviſes his Eſtate to his Wife, to be by her diſpoſed of (a) to ſuch of his Children as ſhe ſhall think fit; ſhe hath here only a nominating and directing Power. Carter 232. 1 Mod. 189, 190. Lucas 31, 72, 73.

(a) If a Deviſor gives to another Power to diſpoſe, he gives to that Perſon the ſame Power that he had, (*viz.* the ſame Eſtate) tho' no Eſtate is mentioned. *Per* three Judges. 1 *Mod. Rep.* 160.

*Vaughan* was of a contrary Opinion, that the Wife was only to name what Perſon ſhould take by the Will; ſo that what Eſtate ſhould ariſe, ſhould ariſe from the Words of the Will, and not from any Diſpoſition of the Wife. *Ibid.*

A Fee cannot be upon a Fee, but by a future Executory Deviſe; and that upon Neceſſity.

There cannot be a Fee upon a Fee (b) in any Caſe but by a future and executory Deviſe, and that upon Neceſſity; as where a Man gives Land to his eldeſt Son and his Heirs, upon Condition, that he pay to his younger Son 20 l. And that if he do not do it, that then the Eſtate ſhall go to the younger Son and his Heirs: The eldeſt Son makes default of Payment. Adjudged that the youngeſt Son ſhall have the Land: For altho' in a Will, the Word Paying makes a Condition, yet when the Deviſe is to the eldeſt Son, paying, &c. the Law conſtrues this Word Paying to be a Limitation; for if it were a Condition, it deſcending upon the eldeſt Son, it would be at his Pleaſure to pay, or not. 3 Rep. 24. a. Cr. Eliz. 204. Owen 112. 2 Mod. 7. 1 Lut. 809. 3 Mod. 32.

See before for this Matter, fol. 99. and alſo in Modern Caſes 241. per *Holt* Chief Juſtice.

When he has once diſpoſed of the Fee, he can diſpoſe of no more.

(b) When the Owner of the Land has once ſettled the Fee-ſimple of the Lands, there is nothing more remains in him to diſpoſe of. It ſeems to me, ſays *Rokeby*, to be a Contradiction *in Terminis*, when a Man ſays, *I give all my Eſtate to* A. *and his Heirs*, and then he comes and ſays, *the Remainder of my Eſtate I diſpoſe to* B. Mich. 9 W. in Canc. *Lloyd & al'* againſt *Carew.*

There is a Difference where the Money to be paid, is a Sum in Groſs, and where it is to be paid out of the Profits; in the one Caſe it ſhall make a Fee, in the other not. *Car.* 225, 226. 6 *Co.* 16. *Cr. Eliz.* 378. *Cr. Ja.* 527. *Cr. Car.* 158, 416. *Co. Litt.* 9. *b.* 5 *Co.* 21. 2 *Lev.* 249. 2 *Salk.* 685. 2 *Mod.* 25. *Bendl.* 15. 1 *Jones* 211.

A Deviſe with a Charge to the Deviſee, is a Fee, tho' no Eſtate mentioned.

Where a Deviſe of Lands is made, with a Charge to the Deviſee, that ſhall be a Fee, though no Eſtate is mentioned. *Jones*, Chief Juſtice 107.

Deviſe to the eldeſt Son, void.

1. The Deviſe to the eldeſt Son, was no more than the Law gave him, and ſo void. (a) Cro. El. 833. pl. 2.

(a) A Deviſe to one who is Heir for Life, the Remainder in Contingency, is good, and the Deſcent of the Reverſion ſhall not drown his Eſtate. *Raym.* 28, 29, 30.

A Deviſe to th Heir for Life, the Remainder in Contingency, is good.

A Man deviſes to his eldeſt Son for Life, under the Conditions and Limitations in his Will, and after his Death, to the Uſe of the Heirs [*] of his Body: This, altho' limited to him for Life, is an Eſtate-Tail in him, as well in a Will, as in any other Conveyance. The Eſtates cannot ſtand together, but the Eſtate for Life is merged in the Eſtate-Tail: So alſo where an Eſtate is limited by Deed to a Man for Life, Remainder to the Heirs of his Body, this is an Eſtate-Tail. *Carter* 171.

[*] Had it been Heir in the ſingular Number, it had been for Life. *Archer's* Caſe, 1 *Rep.* 66. *b.*

And is a future Deviſe to the younger Son, on the Eldeſt's *Default* of Payment.

2. And this was a future Deviſe [†] to the younger Son, upon the eldeſt Son's Default of Payment. Cro. El. 683. pl. 2. Vaugh. 271.

[†] *Viz.* Executory Deviſe.

A Deviſe may be to one to the Uſe of another, and the Uſe ſhall be executed.

A Deviſe may be to one to the Uſe of another, and the Uſe ſhall be executed, if the Intent of the Deviſor appears to be ſo. Lutw. 823.

A Deviſe to his Son *T.* for ever, and if he died without Iſſue (living *W.* his Son) then to *W.*

A. had Iſſue Thomas and William, and deviſed to Thomas and his Heirs for ever, and if Thomas died without Iſſue (living William) then William ſhould have it to him and his Heirs.

(b) A Man deviſes to his Son *A.* in Fee, and if he dies *ſans* Heir of his Body, then to another of his Sons, (not to a Stranger) this ſhall be an Eſtate-Tail, and not a Fee, in *A. Vide Cro. Jac.* 290. *pl.* 7. 416. *pl.* 5. *Cro. Car.* 58. *pl.* 1. *Yelv.* 209. *Vaugh.* 269, 270. 2 *Salk.* 233. 1 *Williams* 23.

Deviſe to his Son *A.* in Fee, and if he die *ſans* Heir of his Body, then to another Son. It is an Eſtate-Tail.

It is a Fee in *Thomas* determinable, and *William* hath a Fee by executory Deviſe, if *Tomas* die before him *ſans* Iſſue.

1. Reſolv'd, That this is a Fee in Thomas. 2. That William had by Executory Deviſe, (c) a Fee in Poſſibility, if T. died without Iſſue before him; ſo the Eſtate of Thomas was a Fee determinable upon a Contingent, and not an Eſtate-Tail. And the Fee of T. determined upon his dying without Iſſue (living William (d.) Vaugh. 272. Pell and Brown's Caſe in Cro. Jac. 590. pl. 13. 1 Roll. Abr. 611. Palm. 131.

And the Fee of *Thomas* determines on his dying, in the Life of *William* without Iſſue.

2 Roll.

(c) There are two Things to make an Executory Deviſe.

It muſt be limited upon an Eſtate in Fee, and it ought to be limited upon a Condition.

An Executory Eſtate muſt be limited on a Fee, and on a Condition.

A Remainder cannot be Executory, where there is a particular Eſtate to ſupport it. 4 *Mod.* 284. 2 *Sand.* 380. 3 *Lev.* 434. *Carth.* 310.

A Remainder on a particular Eſtate is not Executory.

Where it is doubtful whether an Eſtate or Uſe limited *in futuro*, ſhall veſt in

If doubtful, whether an Eſtate or Uſe limited *in futuro* ſhall veſt, it is a Contingent.

Eſtate

2 Roll. Rep. 216. 2 Leon. 111. Cr. Eliz. 205. 1 Roll. Abr. 626. Dyer 124. 3 Chan. Ca. 9. Lucas 422. 2 Williams 28.

Eſtate or Intereſt, or not, there the Eſtate or Uſe is ſaid to be contingent, becauſe upon a future Contingency, it may either veſt, or never, as the Contingency happens or not. 1 *Brook* 234. *Dyer* 33. *Vaugh.* 271. 3 *Leon.* 64. 1 *Salk.* 226.

**The Difference between ſuch Contingency, and a Limitation of Eſtate in Poſſeſſion.**

And there is a Difference between ſuch Contingency and a Limitation of Eſtate by Words of Contingency, which extend upon the Limitation of former Eſtates, and which veſt in Eſtate or Intereſt preſently, to take Effect in Poſſeſſion *in futuro:* As where *A.* leaſes to *B.* for the Life of *B.* rendring to *A.* 40*s. per Annum,* during the Life of *A.* and after the Death of *A.* to *B.* and his Heirs. This Remainder to *B.* cannot veſt preſently, becauſe it may never veſt in Eſtate or Intereſt; and the Contingent in this Caſe, is the Time of the Death of *A.* For if *A.* dies, living *B.* the Remainder is good; but if *A.* overlives *B.* and dies, the Remainder is void. 10 *Rep.* 85. *a. b.*

**What great Cautions have been uſed in theſe Points.**

(d) *Per* Lord Chancellor: I think the Caſe of *Pell* and *Brown* was never mentioned in any Court, but with a great deal of Caution; and the Judges have ſaid, that though they could not go back, yet they would never carry it further: And there hath been great Caution in the Judges upon all Occaſions, where any of theſe Points have come before them, not to explain themſelves how far they would go.

But ſtill when this Caſe hath been mentioned, they have declared they would not go back, but could go no further. *Lloyd* v. *Carew, M.* 9 *W. in Canc.*

**Where a Contingency is limited on a Freehold, it is a Contingent Remainder, not an Executory Deviſe.**

**A Contingent Remainder, *Quid.***

**Where a Contingency is limited to depend upon an Eſtate of Freehold, which is capable to ſupport a Remainder, there it ſhall never be conſtrued to be an Executory Deviſe, but a Contingent Remainder only.** (a) 1 Saund. 388. 2 Saund. 380. 3 Lev. 434. Carth. 310.

**An Executory Deviſe.**

(a) When a particular Eſtate is limited, and the Inheritance paſſes out of the Donor, this is a Contingent Remainder, and in Abeiance; but if the Fee is veſted in any Perſon, and to be veſted in another upon a Contingent, this is an Executory Deviſe.

**No Contingent Executory Eſtate, can be barred by a Recovery.**

**No Contingent Executory Eſtate can be touch'd by a Recovery; for that bars only where there is a Privity in Law, as he in Remainder or Reverſion.** (b) Carter 53.

**Nor an Heir who claims not as an Heir, but as Purchaſer.**

(b) Neither ſhall it bar the Heir, where he doth not claim as Heir by Deſcent, but only as a Purchaſer. *Per Rokeby* and *Treby, Mich.* 9 *W. in Canc. Lloyd* and *Carew.*

A Deviſe to an Infant *en Ventre ſa mere* is good.

A Deviſe to an Infant en Ventre ſa mere, is good by way of future Executory Deviſe. Raym. 164. Carter 87. Raym. 83. Mo. 177. 1 Lev. 135. 1 Sid. 153. 1 Keb. 851. 2 Bulſ. 273.

A Deviſe by Leſſee for Years to *A.* for Life, Remainder to B.

It is a contingent Poſſibility which (if *A.* die during the Term) ſhall veſt.

Where a Termor deviſes his Term to A. for Life, Remainder to B. this is a Contingent Poſſibility, ſo that if A. ſurvive the Term, then the Term is gone, and it could never veſt; but if he dies during the Term, it ſhall veſt. (a) Raym. 141. 2 Lev. 264.

Deviſe of a Term to *A.* for Life, after death of *A.* it ſhall go to Deviſor's Executor.

(a) If a Deviſe be of a Term to *A.* for Life, after the Death of *A.* his Executors ſhall not have it, but it ſhall go to the Executor of the Deviſor. 1 *Mod. Rep.* 54.

But if deviſed generally it ſhall go to the Deviſee's Executor.

But if it be deviſed to *A.* generally, (without ſaying for Life) it ſhall go to his Executors after his Death; but a Deviſe for Life veſts in the Deviſee only, during his Life, and you may make a Limitation over. 1 *Mod. Rep.* 54.

Leſſee for ſixty Years on three Lives, to ſeveral ſucceſſively for Life, and ſurviving Deviſee grants the Term, and dies.

A Leaſe is made to *A.* for ninety-nine Years, if *B. C.* and *D.* ſo long live: *A.* deviſes this Term to *E.* for his Life, and if he die during the Term, to *F.* for his Life; and if he die during the Term, then to G. and ſo on. *A.* dies, the Deviſees for Life all die but one; and the Survivor grants his Eſtate and Term over, and dies; (one of the three Lives in the Term being *in eſſe*, and the Term not expired.) The Executor of *A.* enters, and claims the Term, and the Queſtion was, Whether the Grantee of the ſurviving Deviſee for Life, or the Executor of the Leſſee ſhall have it? And it was adjudged, that the Executor of the Leſſee ſhall have it; for neither of the Deviſees had it for any longer Term than their Lives, and when they died, their Eſtate and Intereſt died with them; and then the Term reſulted back and veſted in the Leſſee's Executor. *Eyre* and *Falconer*, *Hill.* 9 *W. Regis in C. B.* upon a ſpecial Verdict.

The Leſſee's Executor, and not the Grantee ſhall have the Remainder of the Term.

*Treby*, *Mich.* 9 *W. in Canc. Lloyd* and *Carew*, asks this Queſtion, If there ſhall be Bounds put to the Deviſees of Terms, what ſhall they be?

Says he, They ſhall be circumſcribed to a Life or Lives in Being, but not for a Day over, or any Life not *in eſſe:* And alſo the Lord Chancellor to the ſame Purpoſe.

A Deviſe to the right Heirs of *J. S.* (who is living) is good, by two Judges.

For a Deviſe may be *in futuro.*

By others it is void.

A Deviſe to the Heirs of the Body of J. S. (J. S. being then living) by two Judges*; This is good, and there is a Difference between Acts executed and Deviſes: A Deviſe may be in futuro; as a Deviſe to J. S. when he marries A. B. there no Eſtate veſts in him till Marriage; this is a Contingency purſuant to the Courſe of Nature.

By the other two Judges † it is void; for Conveyances at the Common Law

* *Twiſden* and *Kelynge.*

† *Wyndham* and *Moreton.*

are good Directions for Wills. There ought to be a Deviſee as well as a Deviſor in eſſe, at the Time of the Deviſe; and a Deviſe to the Heirs of J. S. he being alive at the Death of the Deviſor, is void. Raym. 163, 164. Mo. 860. Co. Litt. 24. b. 2 Leon. 70. Dyer 99. Hob. 33. 1 Co. Archer's Caſe, & 103. Where there is no Deviſee at the Death of Teſtator, when the Will is to take Effect, the Deviſe is void. Lucas 371, 372.

To a Man for Life, Remainder to the Heirs of his Body, is an Eſtate-Tail.

Where an Eſtate of Freehold is limited to a Man for Life, Remainder to the Heirs of his Body, this is an Eſtate-Tail, in a Deviſe, as well as in a Deed, for both the Eſtates cannot ſtand together, and the Eſtate for Life is merged in the Remainder in Tail. Carter 171. Vide Hob. 30. 1 Vent. 230, 214, 225. 2 Lev. 58. 3 Keb. 42, 52. 3 Lev. 431. 2 Vern. 427. 1 Salk. 236. 1 Williams 54.

A Deviſe of Legacies to be paid out of Land, ſooner than they can be raiſed out of the Profits, the Deviſee ſhall have a Fee.

A Man deviſes Legacies to be paid out of his Lands, though they are not of the Value of the Lands; yet if they are deviſed to be paid ſooner than they can be raiſed out of the Profits of the Land, the Deviſee ſhall have a Fee. Jones 113, 114. 6 Rep. 16. a. b. Mod. C. 111. 2 Lev. 249. 2 Salk. 685.

A Termor may deviſe for Life, Remainder to another.

A Termor may deviſe to one for Life, Remainder to another, (a) and it ſhall be good, ſaith Jones arguendo. 1 Vent. 79. 1 Mod. Rep. 51. 8 Rep. 95. a. b.

Deviſee of Goods or Chattels, may not take them without the Executor's Aſſent.

(a) If a Man deviſes Goods by a ſpecial Name, or general Goods or Chattels, Real or Perſonal, and dies, the Deviſee cannot take them without the Aſſent of the Executor. *Co. Litt.* 111. *a.* For if he ſhould, this might make a *Devaſtavit* in the Executor; for it might be the Teſtator did not leave Goods ſufficient to pay his Debts, without theſe Goods, and then they would be Aſſets in his Hands for the Payment of the Teſtator's Debts.

Deviſe to a Son and Heirs Male of his Body, for 500 Years, it is but a Term.

I deviſe to my Son all my Manors, *&c.* to hold to him and the Heirs Male of his Body, after my Deceaſe, for 500 Years then next enſuing; this Deviſe is but for Years, for ſo are the expreſs Words of the Deviſe; and againſt expreſs Words, no Inference or Interpretation ſhall be admitted. 10 *Rep.* 87. *a.*

If a Term is deviſed to a Man, and the Heirs of his Body, a Remainder cannot be limited over.

Nor any Appointment by Executory Deviſe.

After a Deviſe of a Term to a Man and the Heirs of his Body, (a) there cannot be any Remainder limited over, nor any Appointment by Executory Deviſe. Becauſe the Law will not preſume any Term to continue ſo long as Iſſue of the Body may. 1 Sid. 451. Cr. 2 Car.

And the Executor (and not the Heir) ſhall have it.

(a) Where a Term is deviſed to one, and to the Heirs of his Body, his Heir ſhall not have it, but his Executor; for a Term, which is but a Chattel, cannot be intailed, but ſuch Deviſee may well alien the Term if he pleaſes. 10 *Rep.* 87.

Deviſe to one for Life of a Term, Remainder for Life, and ſo on to twenty ſucceſſively, is good.

Car. 167. 1 Roll. Abr. 610. 1 Sid. 456. Cr. Ja. 461. 4 Inſt. 87. 3 Chan. Ca. 6, 10. Nota; Per Twiſden, The Law is now ſettled, That if a Term be deviſed to one for Life, Remainder to another for Life, Remainder to a third for Life, and ſo to twenty, the one after the other, this is a good Deviſe to all theſe, notwithſtanding the Objections of Poſſibilities upon Poſſibilities, if all the Perſons were in eſſe at the Time of the Deviſe, becauſe all the Candles are lighted at once. 1 Sid. 451. 1 Mod. Rep. 54, 114. 1 Vent. 79. But if the Deviſe is to one for Life, who is not in eſſe, (as the firſt Son,) there can be no Limitation beyond this; quod omnes Juſticiarii conceſſer'. 1 Sid. 451.

If all *in eſſe* at the Time of the Deviſe.

But a Deviſe to one not *in eſſe* for Life, there can be no Limitation beyond it.

87. *a. b.* 1 *Sid.* 37. 3 *Chan. Ca.* 6, 10.

A Term deviſed for Life, Remainder to another.

A Deviſe of the Profits of a Term to one for Life, and after to another for the Reſidue of the Term; the firſt Deviſee enters by the Executor's Aſſent, he in Remainder in the Life of the firſt Deviſee aſſigns over, and the firſt Deviſee died, it is void; for he had but a Poſſibility during the firſt Deviſee's Life, which cannot be granted over. 4 *Rep.* 66. *Dy.* 116. *Raym.* 146. 1 *Sid.* 188.

Aſſignment of the Reſidue of the Term in the Life of the firſt Deviſee, is void.

A Deviſe of all his Lands, Tenements and Hereditaments not before diſpoſed of, a Reverſion not diſpoſed of, will thereby paſs.

I deviſe all the reſt of my Lands, Tenements and Hereditaments, in the Kingdom of England not before diſpoſed of: It was held, that theſe Words would carry the Reverſion of his Houſe, as an Hereditament undiſpoſed of. 2 Vent. 286. See Modern Caſes 111.

A Deviſe *imperpetuum*, is a good Fee.

A Deviſe to a Man in perpetuum is a good Deviſe in Fee. * (a) Litt. ſect. 586. Co.Litt.6.b. 1Bulſt.222. Bendl. 11. Mo. 57.

* So a Deviſe to one to give or ſell; or a Deviſe to one in Fee-ſimple; ſo alſo to one and his Aſſigns for ever. *Co. Litt.* 9. *b.* 1 *Roll. Abr.* 834. *Bro.* Tit. *Deviſe* 33. But a Deviſe of all my Lands in B. to *J. S.* is but an Eſtate for Life for want of the Word *for ever. Ibid.*

But in a Deed it is but for Life.

(a) But in a Deed it is but for Life, for want of the Word *Heirs. Ibid. Vide Mod. Ca. in Law and Eq.* 253, 255, 256, 7. *Fitz-Gib.* 7. Where one may take a Fee by Deviſe without the Word *Heirs.*

A Grant to a Man and his Heirs Male, is a Fee for want of what Body. But by a Deviſe it is an Eſtate-Tail.

Where Lands are given to a Man and his Heirs Male, or Heirs Female, this is a Fee: Becauſe it is not ſaid of what Body. Litt. ſect. 31. Cro. Eliz. 478. Mo. 424. 7 Co. 41. Litt. Rep. 344. Plowd. 541. 3 Leon. 5. Hob. 32, 37. 2 Sid. 41. But a Deviſe to a Man and his Heirs Male, (b) is an Eſtate-Tail; for there the Law ſhall ſupply the Defect of the Word Body. Br. Tit.

A Deviſe in Tail Male, the Son of his Daughter cannot inherit.

(b) But where a Deviſe is to a Man, and the Heirs Male of his Body, the Son of

Tit. Deviſe, 1, Co. Litt. 9. b. 27. a. 1 Vent. 228, 229.

of his Daughter ſhall not inherit; for although a Deviſe may create an Inheritance by other Words than a Gift can, yet a Deviſe cannot direct an Inheritance to deſcend againſt the Rules of Law. *Co. Litt.* 25. *a.* 1 *Roll. Abr.* 835. 1 *Vent.* 228.

How it is where a Man deviſes Lands for the Payment of his Debts.

**If a Man deviſes by his Will Lands to be ſold by his Executors for the Payment of his Debts, (a) the Executors have but a Chattel and an uncertain Intereſt until the Debts are paid; and it ſhall go to the Executors of the Executors for the Payment of his Debts.** Co. Litt. 42. a. 1 Williams 509.

Upon a Deviſe of Lands for the Payment of Debts and Legacies, the perſonal Eſtate ſhall help to pay them.

(a) Where Lands are deviſed for the Payment of Debts and Legacies, the perſonal Eſtate ſhall notwithſtanding go and be applied to the Payment of Debts, and the Land ſhall only make up the Reſidue. 2 *Vent.* 349. 1 *Lev.* 203. *Fitz-Gib.* 41.

. Where a Man deviſes Lands to his Executors to be ſold, one dies before Sale, the Survivor may ſell.

**Where a Man deviſeth his Land to his Executors (b) to be ſold, and one of the Executors dies before Sale, the ſurviving Executor may ſell; but if it had been to A. B. and C. his Executors to ſell, there the Survivors could not ſell,** (ſed 2 Cro. 382. contra,) **becauſe otherwiſe the Words of the Teſtator could not be ſatisfied.** Co. Litt. 112. b. 113. a. 236. a. **It is a good Way in a Will to put in theſe Words,** That the Executors or the Survivors or Survivor of them ſhall ſell. *Co. Litt.* 113. *a.*

Two Executors, and one dies, the Survivor ſhall ſell.

(d) And makes two Executors, and one dies before the Sale, yet the other may ſell, becauſe as the Eſtate, ſo the Truſt ſhall ſurvive. *Co. Litt.* 113. *a.* ſee *Cro. El.* 26. *pl.* 5. *Mo.* 147.

Where Lands are deviſed to be ſold by Executors, though Part of them * refuſe, yet the Reſidue may ſell, by Statute of 21 *H.* 8. *cap.* 4.

* *Viz.* the Executors.

Deviſe of Land to be ſold for Payment of Debts, and ſays not who ſhall ſell; The Executor ſhall ſell.

A Man deviſes his Lands to be ſold for Payment of his Debts, and doth not name who ſhall ſell, here the Executors ſhall ſell, for it is the Office of the Executor to pay Debts, and the Money raiſed by the Sale ſhall be Aſſets.

But an Executor of an Executor cannot ſell.

But if an Executor renounce, yet he may ſell.

But an Executor of an Executor ſhall not ſell, for this is a *Nude* Authority, and not given to an Executor, *quatenus* Executor; but if an Executor renounces the Executorſhip, yet he may ſell. *Jones* 25, 26.

A Deviſe to two Sons and their Heirs, if one die before the Deviſor, the other ſhall have all.

**Lands are deviſed to two Sons and their Heirs, one dies in the Life of the Deviſor; the Deviſor dies without any new Publication, the Survivor ſhall have all: If both had died, their Heirs could not have taken.**

If both had died, their Heirs would not have taken.

taken. Carter 3, 4, 5. Vide Brett and Rigden's Caſe in Plow. Cr. Eliz. 422, 423, 243. 1 Leon. 253. 1 Co. 101. a. 1 Williams 397, 399. Lucas 98, 369, 371, 372, 421. Fitz-Gib. 231. Mod. Ca. in Law and Eq. 221.

Deviſe to *A.* in Fee, who dies before Deviſor, his Heirs cannot take.

Lands deviſed to A. B. and his Heirs, the Deviſee dies in the Life of the Deviſor, the Heirs of A. B. ſhall not take. Carter 4.

A Deviſe to two, one not *in eſſe*, the other takes all.

A Deviſe to two, and one not in eſſe, the other ſhall take all. Carter 15. Vide Fitz-Gib. 231.

Deviſe to his Wife until his Iſſue come to eighteen, for bringing up the Child.

The Child dies yet ſhe ſhall have it for eighteen Years.

The Husband deviſes his Eſtate to his Wife, until the Iſſue of his Body accompliſhes the Age of eighteen Years, for bringing up his Child, the Child dies, yet ſhe ſhall have it for the eighteen Years. (a) Carter 27. 3 Co. 19. 6 Co. 35.

A Deviſe to his Wife, of the Profits of the Land until his Child come of Age, to educate it, is a Deviſe of the Land.

And a Chattel in her.

If the Husband deviſes the Profits of his Lands to his Wife, (b) until his Child comes of Age, to bring up and educate the Child, this amounts to a Deviſe of the Lands, and is a Chattel in the Wife. Carter 26.

A Deviſe of Land to *A.* in Fee, and in another Clauſe, a third Part to *B.* for Life.

A Man deviſeth Blackacre to A. in Fee, and afterwards in the ſame Will deviſes a third Part to B. for Life; this Deviſe to B. doth not make void all to A. but B. ſhall have an Eſtate in Poſſeſſion, and A. in Remainder. Carter 174.

A deſcendible Freehold may be deviſed.

A deſcendible Freehold is deviſable by the Statute of Wills. Carter 211. and Took and Glaſcock in Saunders.

A Deviſe to the eldeſt Son, upon Condition, yet it is a Limitation.

A Deviſe to the eldeſt Son, though it be by Words of Condition, yet it is (c) a Limitation, and upon the Limitation it ceaſes, without Entry or Claim. Carter 171. Cro. El. 833. pl. 2. 1 Roll. 411. Raym. 236, 237. and Porter and Fry, 1 Mod. 205. But if it be, and in Default thereof Remainder over, here the Remainder-Man ſhall, upon Breach, have the Eſtate by executory Deviſe. Modern Caſes 241.

In a Conveyance to Uſes there may be an Interpoſition of other Eſtates, and the Remainder ſtand good.

There is a Difference between Conveyances to Uſes, and a Will: In a Conveyance to Uſes there may be an Interpoſition of other Eſtates, and the Remainder ſtand good; because this Remainder depends and

Tho' a Remainder.

(a) If there had been a Remainder over, and the Child had died within a Year, he in Remainder ſhall not take preſently. *Carter* 27.

(b) A Man deviſes his Rents in *D.* to his Wife, this is a Deviſe of the Land it ſelf for her Life. *Cro. Jac.* 104. *pl.* 30. *Lucas* 94, 287.

(c) For if it ſhould be a Condition none can take Advantage of it, but the Heir at Law.

But in a Will the Remainder ſettled, muſt follow the Rule of Law.

hangs on the firſt Root; (a) but in a Will, the Remainder ſettled muſt follow the Rule of Law: After the Death of the Deviſor, there is no Root or Spring there. Carter 175.

(a) That is the Eſtate which remains ſtill in the Covenantor.

Deviſe to *B.* for Life, Remainder to *C.* on Condition if ſhe marries without the Conſent of *E. F. &c.*

Then to *M.* in Fee.

She marries without Conſent.

It is a Limitation, and not a Condition.

And her Marriage is a Forfeiture of the Eſtate.

A Deviſe to B. for Life, Remainder to C. upon Condition, that if ſhe marry without the Conſent of E. F. &c. and the major Part of them, or die without Iſſue of her Body, then to M. in Fee; C. marries without Conſent, and had no Notice of the Will:

This is a Limitation, and not a Condition, and Notice is not neceſſary, becauſe the Deviſor appointed no Body to give Notice; it was adjudged a Forfeiture of the Eſtate. Raym. 236, 237. Vide Porter and Fry's Caſe in 1 Mod. Rep.

The Word *Heir* may in a Will deſcribe a Perſon, but not *Heirs* in the Plural Number.

The Word Heir in a Will may be intended the Deſcription of a Perſon, but the Word Heirs, in the plural Number, cannot. Raym. 333.

A Deviſe that his Wife ſhall enjoy all his Land during Life, if ſhe do not marry.

But if ſhe marry that his Son *H.* ſhould enter, and enjoy to him in Tail, Remainder to *R.* in Tail Male.

A. ſeized in Fee had Iſſue H. his eldeſt Son, and deviſes, that his Wife ſhall enjoy all his Lands during her natural Life, if ſhe do not marry; (b) but if ſhe does marry, (c) then I will that my Son *H.* ſhall preſently after his Mother's Marriage enter and enjoy the Premiſſes to him and the Heirs Male of his Body, with Remainder over to R. his ſecond Son in like Manner.

Unleſs ſhe marry, there is no Remainder in Tail.

(b) So that unleſs ſhe married (ſays the Heir at Law) there could be no Remainder.

The Remainder in Tail muſt commence on the Marriage;

which never happening, it never veſts.

(c) For the Remainder to *H.* and his Iſſue Male, muſt commence upon the Marriage, and not before, which is a Contingency; and that Contingency never happening, then the Remainder did never veſt in *H.* but his Daughter and Heir was in as Heir at Law.

The Wife entered and died unmarried.

The Wife had an Eſtate for Life determinable.

A. dies, the Wife enters and dies unmarried; H. enters and has two Sons C. and D. and dies; C. enters, and has Iſſue a Son and Daughter, the Son dies, and the Queſtion was between R. the ſecond Son of A. and the Daughter of C. the Son of H. the firſt Son, who ſhould have the Land? For if this was an Eſtate-Tail veſted in the Heirs Male of H. the firſt Son, and for Default of ſuch Iſſue Male, then to R. the ſecond Son of the Deviſor, (a) then R. had a good Title: But if it was a Fee-ſimple in H. if the Wife did not marry, then it ſhould be to the Daughter of C. the Son of H. And it was adjudged

(a) That is, if the Remainder veſted, notwithſtanding the Wife did not marry.

**that the Wife has an Eſtate only** durante viduitate, **which is an Eſtate for Life determinable.** (a)

It is no Contingent. Remainder, but an Eſtate veſted in *H.* in Tail.

**And alſo that this is no Contingent Remainder, but an Eſtate veſted in** H. **to take Effect in Poſſeſſion upon the Marriage or Death of the Wife.** (b) Raym. 427, 428, 429. 3 Lev. 125. **And Judgment given for** R.

A Deviſe to two and their Heirs, equally to be divided; ſo far it is a Tenancy in Common in Fee.

**Where a Deviſe is in the Beginning of the Will, to two and their Heirs, equally to be divided; ſo far it is a Fee-ſimple, and makes a Tenancy in Common.** Cro. El. 443. pl. 7. *695*, *696*. pl. *6*. Vide Moor 558. pl. *759*. Dyer 25. a. 2 Roll. Abr. 89. **and** 1 Williams 21. **where it is ſaid, that the Words** equally to be divided **did not originally make a Tenancy in Common, even in a Will.**

But if added, *And if they die without Iſſue, &c.* it is in Tail.

**But when it goes farther and ſays,** and if they (c) die without Iſſue, then, *&c.* **this ſhews what Heirs were intended**, viz. **Heirs of their Bodies.** Cro. Jac. 290. pl. 7. Cro. Car. 58. pl. 1. Vaugh. *269*, 270. Vide Noy *64*. Dyer 330. 1 Roll. Abr. 835. 1 Williams 23.

If one dies without Iſſue, the other has the Whole in Tail, by Way of Croſs Remainder.

**One of theſe Deviſees dies without Iſſue, her Eſtate ſhall remain to the other Deviſee, and the Heirs of her Body, by Way of Croſs Remainder; and not to the Deviſee in Remainder after the Death of them two without Iſſue.** (d) Raym. 452, 453. Vide Mod. Ca. in Law and Eq. 260, 381, 382.

A Deviſe of all his Inheritance, or *totum ſtatum* carries a Fee.

**A Man deviſes all Inheritance, this carries a Fee-ſimple; ſo where he deviſes** * totum ſtatum (e) **it is as comprehenſive as that.** 1 Mod.

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(a) *Co. Litt.* 42. *a.* And in Pleading the Grantee ſhall ſay, *That by Virtue thereof he was ſeized for Life.*

(b) And ſo is the Intent of the Will, that the Land ſhould go to the Iſſue Male, and not Female, which would not be, if this were a Contingent Remainder; altho' it was objected, that the Teſtator's Meaning was, that *H.* ſhould have a Fee, if his Wife did not marry. *Raym.* 428, 429.

(c) Doth not ſay, or either of them, but both of them.

Where three Deviſees, Croſs Remainders are difficulty ſettled.

(d) In Caſe of three Deviſees, Croſs Remainders will be more difficultly ſettled than two; as whether the Survivors ſhall be Tenants in Tail, or Jointenants for Life, with ſeveral Inheritances. 2 *Roll. Rep.* 281. *Raym.* 455. *Hob.* 34, 75.

* If he hath a Fee, the Deviſee ſhall have a Fee.

By Releaſe of *totum ſtatum*, a Fee will paſs.

(e) By a Releaſe of *totum ſtatum* an Inheritance will paſs. 1 *Mod. Rep.* 101. If I deviſe

Rep. 101. Hob. 65. Mod. Caſes from 107 to 113. Style 281. 2 Lev. 91. 4 Mod. 89. Lucas 532. Salk. 236.

viſe that *J. S.* ſhall be Heir of all my Land; if I have a Fee *J. S.* ſhall have a Fee. See *Modern Caſes* from 107 to 113.

A Deviſe that B. ſhall be his Son's Tutor, the Lands follow the Cuſtody.

Where a Man deviſes that his Brother ſhall be Tutor to his Son during his Minority; here the Land follows the Cuſtody*, and the Truſt (a) is not aſſignable over to any Perſon. Vaugh. 178, 179. 2 Roll. Abr. 46.

* In the Caſe of a Guardianſhip that is an Authority coupled with an Intereſt. 2 *Williams* 122.

(a) Which is perſonal.

A Deviſe during his Son's Minority, for his Education, is no Deviſe of the Guardianſhip.

A Deviſe of Land during the Minority of the Son, and for his Maintenance and Education, until he comes of Age, is no Deviſing of the Guardianſhip. Vaugh. 184.

A Deviſe in Fee to his right Heirs, is void, and he is in by Deſcent.

A Deviſor deviſes a Fee-ſimple to his own right Heirs, by the Name of Heirs; this is void; and they are in by Deſcent, but otherwiſe, in Caſe of a Fee-tail. Hob. 30. 1 Roll. Abr. 626. Plowd. 545. Godb. 461.

A Deviſe that B. ſhall be his Heir.

A. deviſes that B. ſhall be his Heir; this ſhall carry ſuch Eſtate to B. as A. had. Hob. 75.

A Covenant to pay ſuch Legacies as his Wife had given by her Will.

A Man covenanted to pay all ſuch Legacies, as his Wife by her Will (b) dated ſuch a Day, had given: And it was adjudged that notwithſtanding this was not a Will to all Intents and Purpoſes, yet the Indenture referred to that which bore the Name of a Will; and although it was not a Will in Deed, this is not material; but an Action of Covenant will lie for the Non-performance of it. Cro. El. 27. pl. 9. Vide Cro. Car. 219. pl. 5. 220, 376, 597. 1 Mod. Rep. 211, 212.

An Action of Covenant will lie for the Non-performance.

(b) A Woman cannot properly be ſaid to make a Will during the Coverture; but of Things in Action, or Goods which ſhe hath as Executrix, ſhe may make a Will with the Conſent of her Husband; and that Will may be proved. 1 *Roll. Abr.* 608. 1 *Mod. Rep.* 211, 212.

A *Feme covert* cannot make a Will, but of Goods, as Executrix, or Choſe in Action.

And that muſt be with the Husband's Conſent.

A Deviſe to his Iſſue (having Sons and Daughters) after his Wife's Death is void.

A Man deviſed to his Wife for Life, and after her Death to his Iſſue: He had Iſſue two Sons, and two Daughters; and the Deviſe of the Remainder was held void for the Incertainty. Cro. El. 742, 743. pl. 19. But vide Raym. 83. S. C. cited and denied to be Law; and that the eldeſt Son ſhould take; for Iſſue is nomen Collectivum, and ſo is 3 Lev. 433. and 6 Co. 17.

Probate of Wills belongs to the Spiritual Court, and Prohibition lies not.

The Probate of Teſtaments appertains to the Spiritual Court only, and no Prohibitions lie againſt the Probate of them.

Not for Lands only.

The Probate of Wills concerning Lands only, and no Goods, ought not to be proved in the Spiritual Court by Compulſion, altho' they may be proved there; and in Caſe there be a Suit to compel the Probate thereof, a Prohibition lies.

But it may be of Lands and Goods.

But where the Will is both of Land and Goods, there it ſhall be proved in the Spiritual Court, to enable the Executor to ſue for the Debts. Cro. Car. 395, 396. pl. 7. 8 Rep. 23. b. A Will of Lands ought to be proved in the Chancery.

Of Lands in the Chancery.

By a Deviſe of a Houſe, *cum pertinen.* what paſſes.

By a Deviſe of a Houſe cum pertinen. Lands do not paſs, but only the Garden and Orchard. 1 Williams 603. But if it had been with the Lands appertaining, or with the Lands therewith uſed, it would have paſſed. Cro. Car. 57. pl. 1. 1 Williams 603.

So by a Deviſe of all his Goods and Mortgages.

A Deviſe of all his Goods and Mortgages to his Executor, is a good Deviſe of the Lands mortgaged. Cro. Car. 37. pl. 1.

By a Deviſe of all Lands and Tenements, if Deviſor had Lands in Fee, a Leaſe for Years, will not paſs.

Where a Man hath Lands in Fee, and Lands for Years, and deviſeth all his Lands and Tenements, the Fee-ſimple Lands paſs only, and not the Leaſe for Years.

But if Deviſor has no other Lands, it will paſs.

But if a Man hath Leaſes for Years, and no other Lands, and deviſeth all his Lands and Tenements, the Leaſes for Years ſhall paſs. Cro. Car. 292, 293. pl. 3.

A Deviſe to the Heir Male of the Body of *J. S.* (now living) ſhall be his Heir apparent.

A Deviſe to the Heirs Male of the Body of J. S. now living; this ſhall be intended to be a Deviſe to the Heir apparent. Chief Juſtice Jones 100. 1 Vent. 311, 334. Ray. 330. 2 Lev. 232. 1 Williams 229. Abr. Eq. 214, 215.

A Man makes a Will, and deviſes Land, and after makes another, wherein is no Deviſe of Land, whether the firſt is revoked?

A. makes a Will of his Lands, and afterwards makes a later Will; but the Jury do not find, that any Lands were deviſed thereby, ſo that it may, or may not be inconſiſtent with the former; and where the Matter ſtands indifferent, the Court will not ſuppoſe a Revocation of a Will ſolemnly made (a).

But Hale Chief Baron held, That a ſecond ſubſtantive independent Will, tho' it do not by expreſs Words import a Revocation of a former Will, nor paſs any Land, will yet amount in Conſtruction of Law, to a Revocation. Hardreſs Rep. 376, 377.

Feoffment to the Uſe of ſuch Perſon and of ſuch Eſtate, as he ſhall appoint by his Will.

A Man makes a Feoffment to the Uſe of ſuch Perſon and Perſons, and of ſuch Eſtate and Eſtates, as he ſhall appoint by his Will: By Operation of Law, the Uſe veſts in the Feoffor, and he is ſeiſed of a qualified Fee,

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(a) Or it may be a ſecond Will was a Confirmation of the former. *Hardr.* 377.

The Uſe veſts in the Feoffor till declared.

Fee, viz. until a Declaration be made according to the Power. 6 Rep. 16. a.

A Deviſe of Land to educate his Son, or pay ſuch a Sum with the Profits, is for Life.

Where a Deviſe is of the Land, to the Intent that with the Profits the Deviſer ſhall educate his Son, or out of the Profits ſhall pay ſo much, this is but for Life; for here he can have no Loſs, it being out of the Profits. 6 Rep. 16. 2 Mod. 25.

But to pay five Pounds is a Fee.

But where it is paying five Pounds or any Sum, tho' not near the Value of the Land, there it is a Fee, otherwiſe he might loſe all*. 6 Rep. 16. a. Cr. Eliz. 378. Cr. Ja. 527. Cr. Car. 158. Co. Litt. 9. b. 5 Co. 21. Bendl. 15. 2 Lev. 249. 2 Salk. 685.

Diverſity between paying ſo much *per Annum*, and paying ſo much only.

Diverſity between paying ſo much per Annum out of the Profits, and paying ſo much, without ſaying more, which is a Purchaſe. Boraſton's Caſe 3 Rep. 20. b. 21. a. Wellock and Hamond's Caſe there cited; Collier's Caſe 6 Rep. 16. a. and Mod. Caſes from 107 to 113. 2 Mod. 25. Vide ſupra.

* Nay tho' the Deviſe was to the Heir at Law, paying, &c. 3 *Rep.* 21. *a.*

Diſſeiſin.

# Diſſeiſin.

Diſſeiſor, *quid.*

A Diſſeiſor (a) is he who enters into Lands or Tenements, where his Entry is not congeable (b) and ouſteth him who hath the Freehold, without Order of Law. Litt. ſect. 279. Co. Litt. 181, 277. Cro. Car. 303. pl. 6.

Diſſeiſin, *quid.*

(a) A Diſſeiſin is the Putting of a Man out of Seiſin, and always implies a Wrong. *Co. Litt.* 153. *b. Carter* 162, 163.

(b) Diſſeiſin in this Place is underſtood of ſuch Lands and Tenements whereinto an Entry may be made, and not of Things which lie in Grant, as of Rents, Commons, *&c. Co. Litt.* 181. *a.*

There muſt be an actual Ouſter of the Freehold to make a Diſſeiſin.

*Note*; Every Entry is not a Diſſeiſin; but to make a Diſſeiſin there muſt be an Ouſter of the Freehold. *Co. Litt.* 153. *b. Carter* 162, 163.

Jointenants, and Tenants in Common, cannot be diſſeiſed by their Companion without actual Ouſter.

A Jointenant, Tenant in Common or Coparcener, cannot be diſſeiſed by his Fellow, without an actual Ouſter. *Hob.* 120. *Raym.* 371.

Diſſeiſor dying ſeiſed, takes not away the Entry of Diſſeiſee, unleſs five Years quiet Poſſeſſion.

A Diſſeiſor's dying ſeiſed, unleſs he hath had quiet Poſſeſſion without Entry or Claim, for five Years after the Diſſeiſin, doth not take away the Entry of the Diſſeiſee. By the Statute of 32 H. 8. cap. 33.

Where ſeiſed of a Rent-Seck, and the Tenant will not pay it, muſt demand it on the Land. And then if Tenant deny to pay it, or is not there ready to pay it, it is a Diſſeiſin.

Where a Man is ſeiſed of a Rent-Seck, and the Tenant will not pay it, the Party ſeiſed of the Rent, (or ſome other by his Direction) muſt go upon the Land, and demand the Arrears of the Rent; (c) and if the Tenant deny to pay it, this is a Diſſeiſin: So if the Tenant is not there ready to pay it, this is a Diſſeiſin, ſo if there is no Body upon the Land ready to pay it when demanded,

(c) The Demand muſt be upon the Land, or elſe it will not do; and where there is a Houſe upon the Land, a Demand either at the Houſe or upon the Land is ſufficient. *Co. Litt.* 152. *a.*

**ed, this is a Denial in Law,** (a) **and a Diſſeiſin for which an Aſſize lieth.** Litt. ſect. 233.

To be demanded at the Houſe where iſſuing, and not at the Houſe where payable.

A Demand at the Houſe where the Rent is iſſuing, and not at the Houſe where it is made payable, is good to bring an Aſſize. *Cro. Car.* 508. *pl.* 12.

May be demanded at any Time after the Day of Payment.

The Tenant need not demand upon the Day, but at any Time after is ſufficient. *Co. Litt.* 153. *a. b.*

What is a Denial.

(a) Whether the Tenant is preſent or abſent, yet Non-payment is a Denial in Law. *Co. Litt.* 153. *b.*

The two Cauſes of a Diſſeiſin of a Rent-Seck.

**There are two Cauſes of Diſſeiſin of a Rent-Seck,** viz. **Denial and Incloſure.** (b) Litt. ſect. 239.

Why Incloſure is a Diſſeiſin.

(b) The Reaſon why Incloſure is a Diſſeiſin, is becauſe the Lands are ſo incloſed, that the Grantee cannot come upon the Land to demand it. *Co. Litt.* 161. *b.*

Receiving of my Rents or feeding of my Common, is but a Diſſeiſin at Election. *Hob.* 322.

Four Cauſes of Diſſeiſin of a Rent-Charge.

**There are four Cauſes of Diſſeiſin of a Rent-charge,** viz. **Reſcous, Replevin, Incloſure and Denial.** Litt. ſect. 38.

Three Cauſes of Diſſeiſin of a Rent-Service.

**There are three Cauſes of Diſſeiſin of a Rent-Service, Reſcous,** (c) **Replevin,** (d) **and Incloſure.** (e) Litt. ſect. 237.

Reſcous of Lord's Diſtreſs, *quid.*

(c) Reſcous is where the Lord diſtrains, and the Cattle are reſcued from him, or the Tenant or another Man, will not ſuffer him to diſtrain. *Litt. ſect.* 237.

Replevin, *quid.*

(d) Replevin is where a Diſtreſs is made, and the Diſtreſs is replevied by Writ or Plaint. *Litt. ſect.* 237.

(e) For Incloſure, ſee before, and *Co. Litt.* 161. *b.*

A Feme Covert cannot be a Diſſeiſoreſs, but by her actual Entry.

**A Feme Covert cannot be a Diſſeiſoreſs by her Commandment or Procurement, nor by her Aſſent or Agreement ſubſequent; but by her actual Entry, or proper Act, ſhe may be a Diſſeiſoreſs.** Co. Litt. 657. Litt. ſect. 678. 3 Roll. Abr. 660, 661. Bro. **Tit.** Diſſeiſin 15, 67. 8 H. 6. 14.

Dower aſſigned by a Diſſeiſor without Covin, ſhall bind the Heir.

**If a Diſſeiſor or other Wrong-doer aſſigns Dower fairly and juſtly without Covin, that ſhall bind the Heir.** Co. Litt. 35. a. Perk. 394, 395, 398. 2 Co. 67. 3 Co. 78. 5 Co. 30. 6 Co. 58. Plowd. 54. b. Bro. 15, 59.

By a Releaſe to him who enters of his own Head *nil operatur*, being Tenant at Sufferance.

**Where a Man enters of his own Head, and occupies Land** (f) **if the Freeholder releaſeth to him in Fee,** nil operatur, **becauſe there is no Privity between them.** Litt. ſect. 461.

He who enters by Wrong, though he ſays, *He holds at Will*, is a Diſſeiſor.

(f) This muſt be intended of a Tenant at Sufferance; For if a Man enters of his own Wrong, and takes the Profits, his ſaying, *That he holds at Will*, will not qualify his Wrong, but he is a Diſſeiſor, and then a Releaſe to him is good; for he is Tenant of the Freehold. *Co. Litt.* 271. *a.*

But a Releaſe to Tenant at Will, is good.

But where a Releaſe is made to Tenant at Will by his Landlord, this Releaſe is good; becauſe the Tenant was in Poſſeſſion, and alſo becauſe there is a Privity between them. *Co. Litt.* 460, 461.

If Diſſeiſor cut down Timber, Graſs or Corn, Diſſeiſee on Re-entry, may have Treſpaſs againſt Diſſeiſor and Servants.

But if Diſſeiſor make a Feoffment in Fee, Treſpaſs lies not againſt Feoffee.

**If one diſſeiſe me, and during the Diſſeiſin cut down Timber, Graſs or Corn, &c. and afterwards I re-enter, I may bring an Action of Treſpaſs againſt him and his Servants: But if my Diſſeiſor makes a Feoffment in Fee, Gift in Tail, Leaſe for Life or Years, and afterwards I enter, I ſhall not have Treſpaſs againſt them who come in by Title: For this Fiction in Law, That the Freehold hath always continued in me, ſhall not make them who come in by Title, to be Tort-feaſors.** (a) 11 Rep. 51. a. b. Keilw. 1. b. Hob. 98. 2 Roll. 554.

May recover the meſne Profits againſt the Diſſeiſor, but not thoſe claiming under him.

If Diſſeiſor is diſſeiſed, and Diſſeiſee re-enters, the ſecond Diſſeiſor is puniſhable in Treſpaſs.

But in *Cro. Eliz.* 540. *pl.* 3. it was adjudged, That the Diſſeiſee was remitted by his Re-entry to his firſt Poſſeſſion, and then all who occupied in the mean time by what Title ſoever they came in, ſhall anſwer to him for their Time; as if a Diſſeiſor had been diſſeiſed by another, and the firſt Diſſeiſee re-enters, he ſhall in Treſpaſs puniſh the laſt Diſſeiſor.

Diſſeiſee after Re-entry, may bring Trover for Corn, &c.

**Although an Action will not lie againſt the Feoffee of the Diſſeiſor, for the Corn or Graſs,** &c. **cut, yet the Diſſeiſee, after his Re-entry, may ſeiſe, or bring Trover for them; for the Regreſs of the Diſſeiſee hath Relation (as to the Property) to the Continuance of the Freehold in him** ab initio. 11 Rep. 57. b.

Leſſee for Years cannot be diſſeiſed.

**A Leſſee for Years cannot be diſſeiſed; For none can be diſſeiſed but he who has the Freehold.** Cro. Jac. 678, 679. pl. 15.

Two Sorts of Diſcents which toll Entries of Diſſeiſee.

**Diſcents which toll Entries of the Diſſeiſee, are in two Manners, where the Diſcent is in Fee, or Fee-Tail.**

Diſcent in Fee.

**Diſcent in Fee is where a Man ſeiſed in Fee, is diſſeiſed, and the Diſſeiſor ſeiſed hath Iſſue,** (b) **and he dieth;** (c) **now the Land deſcends to his Iſſue as his Heir, who is in Poſſeſſion by a legal Title, not by his own Act; here the Writ of Entry of the Diſſeiſee is taken away, and he is put to his Writ of Entry** ſur Diſſeiſin, a-

(a) But I ſhall recover all the meſne Profits againſt my Diſſeiſor himſelf; though not againſt thoſe claiming under him. 11 *Rep.* 51. *a. Hob.* 98. 2 *Roll.* 554.

(b) Or hath no Iſſue, but other Heirs, it is the ſame Thing. *Litt. ſect.* 389.

(c) To a Diſcent which takes away an Entry, a dying ſeiſed is neceſſary; but as to thoſe Things which lie in Grant, the Diſcent of them doth not gainſt the Heir of the Diſſeiſor. Co. Litt. ſect. 385. Vide Spelm. Feud. 31.

put him who hath a Right to an Action. *Co. Litt.* 237. *b.*

Diſſeiſee may enter, unleſs Diſſeiſor had quiet Poſſeſſion without Entry or Claim, five Years before he died ſeiſed.

Now by the Statute made 32 *H.* 8. *cap.* 33. it is enacted, That unleſs the Diſſeiſor who died ſeiſed, had been in quiet Poſſeſſion for above five Years after the Diſſeiſin, his dying ſeiſed ſhall not take away the Entry of the Diſſeiſee.

**At the Common Law, if the Diſſeiſor, Abettor or Intruder, had died ſeiſed ſoon after the Wrong done; the Diſſeiſee and his Heirs had been barred of his and their Entry; but this is now ſaved to them by the ſaid Statute of 32 H. 8. cap. 33. whereby five Years Time is given them to make their Entry.** (a) Co. Litt. 233. a.

Feoffee of Diſſeiſee is out of the Statute of 32 *H.* 8.

(a) But the Feoffee of the Diſſeiſee is out of this Statute, and remains as at the Common Law. *Co. Litt.* 238. *a.*

Diſcent in Tail which tolls Entry.

**A Diſcent in Tail which takes away an Entry is where a Man is diſſeiſed, and the Diſſeiſor makes a Gift in Tail, and the Tenant in Tail hath Iſſue and dies of ſuch Eſtate ſeiſed,** (b) **and the Iſſue enters; here the Entry of the Diſſeiſee is taken away, and he is put to ſue his Writ of Entry** ſur Diſſeiſin. Litt. ſect. 386.

A dying ſeiſed for Life tolls not Entry.

(b) In Diſcents which take away Entries, a Man muſt die ſeiſed in Fee-ſimple, or in Fee-Tail; for a dying ſeiſed for Life doth not toll an Entry. *Litt. ſect.* 387.

A Diſcent of a Reverſion or Remainder tolls not Entry.

**A Diſcent of a Reverſion or Remainder doth not toll an Entry; becauſe the dying ſeiſed muſt be of a Fee-ſimple, or a Fee-tail, and Freehold at the Time of his Death; otherwiſe ſuch Diſcent ſhall not toll the Entry.** Litt. ſect. 388.

Dying ſeiſed tolls not an Infant's Entry.

**If an Infant hath Cauſe to enter upon another ſeiſed in Fee or in Tail, if he ſo ſeiſed die ſeiſed, and the Land diſcend to his Iſſue during the Infancy of him who had Right to enter, this Diſcent ſhall not toll his Entry;** (c) **for no Laches in ſuch Caſe ſhall be adjudged in an Infant.** Litt. ſect. 402.

32 *H.* 8. *cap.* 33.

(c) He is now *per* Statute of 32 *H.* 8. *cap.* 33. allowed five Years Time. *Co. Litt.* 238. *a.*

Where Laches ſhall prejudice an Infant.

In ſome Things the Laches of an Infant ſhall prejudice him; as preſenting to a Church, *&c. Co. Litt.* 246. *a.* The Non-performance of a Condition, *&c. Co. Litt.* 246. *b. Vide* 1 *Inſt.* 233. 8 *Co.* 44. *Latch* 199. 2 *Roll. Rep.* 72. 1 *Leon.* 100. *Hard.* 11. *Carth.* 43.

The dying ſeiſed, takes away the Husband's Entry in Right of his Wife, accrued after Marriage. But if the Husband die, the Wife may enter on the Iſſue.

But if a Woman has a Right to enter and marries, and Diſſeiſor dies ſeiſed during Coverture, tolls her Entry.

Alſo if Husband and Wife have Right to enter (a) in Manner aforeſaid, and ſuch Tenant dieth ſeiſed, the Entry of the Huſband is taken away, upon the Heir who is in by Diſcent; but if the Husband dies, the Wife may well enter upon the Iſſue who is in by Diſcent; for that no Laches of the Husband ſhall turn to the Prejudice of the Wife, or her Heirs. Litt. ſect. 403.

(a) After Marriage; but if the Wife had a Right before Marriage, and doth not enter, but marries, and then the Diſſeiſor died ſeiſed, this ſhall take away the Entry of the Wife, after the Huſband's Death; becauſe when ſhe was ſole, ſhe might have entered, and it ſhall be counted her Folly, to take ſuch a Husband as would not enter before the Diſcent. *Co. Litt.* 246. *a.*

9 *H.* 8. which diſables a Husband to alien his Wife's Lands.

Where the Husband an Infant diſcontinues the Wife's Lands, his Wife may enter after his Death. *Co. Litt.* 336. *b.* 337. *a.*

A Diſcent caſt during Non-ſanity, takes not away his Heir's Entry.

So likewiſe where one de non ſane Memorie hath Cauſe to enter, and doth not; if ſuch Diſcent is had during his Non-ſanity, and he afterwards dies, his Heir may enter notwithſtanding. (b) Litt. ſect. 405.

If one *Non ſanæ memoriæ* make a Feoffment, he cannot enter, nor have his Action, but his Heir may. If an Infant enfeoffs and dies, his Heir may enter, or have his Action.

(b) If a Man of Non-ſane Memory make a Feoffment, he cannot enter, nor have his Writ of *Dum fuit compos mentis*, but his Heir may enter or have the Writ: So where an Infant makes a Feoffment and dies, his Heir may enter or have it. *Litt. ſect.* 406. 4 *Co.* 123. *Show. P. C.* 152. *Carth.* 435.

If Diſſeiſor enfeoff in Fee on Condition, and Feoffee die ſeiſed, Diſſeiſee cannot enter. But if Diſſeiſor enter for Condition broken, Diſſeiſee may enter.

Where I am diſſeiſed, and the Diſſeiſor makes a Feoffment in Fee upon Condition, and the Feoffee dies ſeiſed, I cannot enter upon the Heir of the Feoffee; but if the Condition is broken, ſo as for that Cauſe the Feoffor enters upon the Heir; now I may enter: For that when the Feoffor or his Heirs entered for the Condition broken, the Diſcent is utterly defeated. (c) Litt. ſect. 409.

(c) The Reaſon is apparent, *Ceſſante cauſa ceſſat effectus*.

If Leſſee is ouſted, and Diſſeiſor dies ſeiſed, the Diſſeiſee cannot, but his Leſſee may enter.

If I have let Lands for Years, and another diſſeiſeth me, and ouſts my Tenant, (d) and dies ſeiſed, and the Lands deſcend to his Heirs; I cannot enter, but my Leſſee may; becauſe by his Entry he doth not ouſt the Heir of the Freehold deſcended to him, but only claims the Land for Years;

(d) If a Man makes a Leaſe for Years of Lands, and a Stranger puts out the Leſſee, he doth alſo diſſeiſe him in the Reverſion: But if the Leſſor puts him out, there is no Diſſeiſin committed; and yet the Leſſee hath loſt

**Years; but it is otherwiſe, where my Tenant for Life is diſſeiſed.** Litt. ſect. 411. **Becauſe by the Entry of the Leſſee for Years upon the Heir of the Diſſeiſor, he takes no Freehold, which is done in the Caſe of an Eſtate for Life.** Co. Litt. 349. a.

**If a Man is diſſeiſed in the Time of War,** (a) **and the Lands deſcend to the Heir of the Diſſeiſor, this ſhall not ouſt a Man of his Entry.** Litt. ſect. 412.

loſt his Eſtate, and hath but a Right, and he cannot now grant his Term*: But if the Leſſor bring Debt for Rent, the Leſſee may plead this Entry and Expulſion. *Hob.* 322.

* Unleſs by Deed ſealed upon the Land.

(a) *Tempore belli* is when the Courts of Juſtice are ſhut up; for when the Courts are open, they protect a Man from Wrong and Violence, and diſtribute Juſtice to all Perſons. *Co. Litt.* 249. *b.*

If Diſſeiſor leaſes for Life, and levies a Fine of the Reverſion, and five Years elapſe, Diſſeiſee cannot enter on Tenant for Life.

**If a Diſſeiſor makes a Leaſe for Life, and afterwards levies a Fine of the Reverſion with Proclamations; and the five Years paſs, ſo as the Diſſeiſee is for the Reverſion barred, the Diſſeiſor ſhall not enter upon his Tenant for Life;** Co. Litt. 298. a. **for then he would avoid his own Grant.** Co. Litt. 302.

If Tenant at Will leaſe for Years and Leſſee enter, it is no Diſſeiſin but at the Election of the Tenant of the Freehold.

**Where Tenant at Will** (b) **makes a Leaſe for Years, and the Leſſee enters, it is no Diſſeiſin, but at the Election** (c) **of him who has the Freehold.** Latch 53. Cart. 162. Cro. Car. 302. pl. 6. Vide Cro. Eliz. 830. pl. 38. 1 Jones 315. Cro. Car. 220, 221. Bro. Diſſeiſin, 68. Dalſ. 46. & vide **where an Entry in Purſuance of a void Leaſe is to be taken for a Diſſeiſin.** Lucas 265.

If Tenant at Will on Ouſter by a Stranger re-enter, he continues Tenant.

(b) If he is ouſted by a Stranger, and he re-enters, he is Tenant at Will to his Leſſor. *Cro. Jac.* 660. *pl.* 9.

(c) Of him to whom the Tort is done. Whoever holds by my Agreement is my Tenant at Will, and I have the Eſtate. *Cart.* 198.

The Leſſee of Tenant at Will is the Diſſeiſor, and then a Releaſe to Tenant at Will is void.

Tenant at Will makes a Leaſe for Years, the Leſſee enters, the Leſſee is the Diſſeiſor, and a Releaſe or Confirmation to the Tenant at Will afterwards is void, becauſe the Privity is gone. *Cro. Eliz.* 830. *pl.* 38. *Vide* Title *Tenant at Will*, and *Carter* 162.

*A.* enfeoffs B. his Truſtee, who bargains and ſells for 100 Years; Leſſee enters, and *A.* continues Poſſeſſion and makes Leaſes, which expire; and dies.

**A. ſeiſed in Fee enfeoffs** B. **his Truſtee,** B. **leaſes, bargains and ſells for** 100 **Years to** C. **to attend the Inheritance, the Leſſee enters;** A. **afterwards continues the Poſſeſſion** (d) **and makes ſeveral Leaſes, which are expired, and dies; after-**

(d) *A.* continuing the Poſſeſſion after the Lease of 100

His Heir leaſes and levies a Fine *ſur Conuſance, &c.* and five Years Non-claim. The Executor of Leſſee for 100 Years aſſigns off from the Land, and five Years Non-claim; the Fine is a Diſſeiſin, and diſplaced the Leaſe of 100 Years, barred by the Fine and Non-claim.

wards his Heir leaſes and levies a Fine ſur Conuſance de droit, &c. and five Years Non-claim. The Executor of the Leſſee for 100 Years aſſigns off from the Land (a) to E. F. who within five Years after the Fine makes no Claim: this Fine made a Diſſeiſin, and diſplaced the Leaſe for 100 Years, and put it to a Right, and it was barred by the Fine and Non-claim. Carter 161, 199.

Years, was Tenant at Will to the Leſſor for 100 Years, (he having entered) and his making of Leaſes for Years made him a Diſſeiſor at the Election of the Party; but if he had made a Leaſe for Life, it had been a Diſſeiſin. 1 *Sid.* 337, 458, 459.

A Fine *ſur conceſſit* would not have turned the Leaſe for 100 Years to a Right.

(a) If a Fine *ſur conceſſit* had been levied, this had not turned the Eſtate; *viz.* the Leaſe of 100 Years to a Right: But the Fine *ſur Conuſance* being a Feoffment upon Record, and an abſolute Diſſeiſin had turned it to a Right; and ſo the Fine and Non-claim for five Years hath barred the Leaſe of 100 Years. 1 *Sid.* 337, 338, 458, 459, 460. See for this Title *Entry.*

If Leſſee is not diſpoſſeſſed, Fine and Non-claim does not bar, tho' another in Poſſeſſion, and he may enter: But if turned to a Right it ſhall bar.

Where a Man is poſſeſſed of a Leaſe, if he be not diſpoſſeſſed thereof, (b) tho' another is in Poſſeſſion, no Fine and Non-claim ſhall bar; but if it is turned to a Right, then he is barred by a Fine and Non-claim, and cannot aſſign; tho' if it is not turned to a Right, then he may enter when he will, and it cannot bar him. Carter 196. 2 Inſt. 517. 9 Co. 106. a. Cro. Ja. 60. 5 Co. 124. 1 Vent. 81.

Leſſee ouſted and Leſſor diſſeiſed, if Diſſeiſor levy a Fine, Leſſor and Leſſee are barred by five Years Non-claim.

(b) That is, if it be not turned to a Right. *Carter* 196. If Leſſee for Years is ouſted, and he in Reverſion diſſeiſed, and the Diſſeiſor levies a Fine with Proclamations, and five Years paſs; the Leſſor as well as Leſſee are barred by their Non-claim, and the Leſſor ſhall not have five Years after the Term expired; and this is by Reaſon of the Saving in the Statute of the 4 *H.* 7. *Podger*'s Caſe, 9 *Rep.* 105. *b.* The Leſſor might have entered, in the Name of the Tenant for Life, for Years, or by Copy, and alſo in his own Right, and ſaved as well their Intereſts as his own Eſtate. 9 *Rep.* 105. *b.* 106. *a.*

Leſſor might enter to ſave his own Eſtate and Leſſee's Intereſt.

Leaſe to commence at the End of a former Leaſe *in eſſe*, which determines, Reverſioner enters, makes a Feoffment, and levies a Fine. Leſſee is barred by five Years Non-claim.

A Leaſe for Years being *in eſſe*, another Leaſe for Years was made to *J. S.* to commence after the End of the firſt Leaſe; the firſt Leaſe determines, the ſecond Leſſee doth not enter; but he in Reverſion enters, and makes a Feoffment, and levies a Fine with Proclamations, and five Years paſs without Entry or Claim of the ſecond Leſſee. Reſolved that the ſecond Leſſee for Years was barred: But if the firſt Leſſee had been ouſted, and a Diſſeiſor had levied the Fine, and he who had the future Intereſt, *viz.* the ſecond Leſſee, enter not

* He not having entered.

within five Years, it ſhall not bar him; for the Diſſeiſor's Fine did not deveſt the future * Intereſt. *Carter* 82. *Saffin's* Caſe, 5 *Rep.* 124. *Carter* 117. *Cro. Jac.* 60.

But a Fine by a Diſſeiſor deveſts not a future Intereſt.

If a Leaſe for Years by Tenant at Will makes a Diſſeiſin, *a fortiori* by Tenant at Sufferance. *Carter* 82. *Vid.* 162. It is a Diſſeiſin at Election. *Latch* 53. *Vide* 2 *Rep.* 59. *b.*

Leaſe for Years by Tenant at Sufferance or Will, do make a Diſſeiſin at Election.

If Leſſee enters and continues Poſſeſſion before his Term begin, it is a Diſſeiſin.

Leſſee for Years at a Day to come enters before his Term commences, and continues Poſſeſſion afterwards, he is a Diſſeiſor. 1 Sid. 8.

Tenant in Fee, to continue the Eſtate in his Blood, leaſes for 500 Years in Truſt; and being ſo poſſeſſed, covenants with others on the Conſideration in the Leaſe to ſtand ſeiſed, and the Leaſe to be to the ſame Uſes, and levies a Fine, and five Years paſs, and dies, bars not; and Leſſee enters. The Reaſon given why it ſhould bar the Leaſe.

A Man ſeiſed in Fee, for Continuance of the Eſtate in his Name and Blood, leaſes to B. for 500 Years, in Truſt that himſelf ſhall receive the Profits, and afterwards that his Brother ſhould enjoy it. And afterwards (he being in Poſſeſſion by Virtue of the Truſt) covenants with other Perſons to ſtand ſeiſed upon the ſame Conſiderations mentioned in the Leaſe; And further, that the ſaid Leaſe, and all other Leaſes to be made by him, ſhould be made to the ſame Uſes, and levies a Fine, and five Years paſs, the Leſſor being all the while in Poſſeſſion; afterwards the Leſſor dies, and Leſſee enters, Whether this Leaſe is barred by this Fine and Non-claim, was the Queſtion? And it was inſiſted upon by Lechmere, That it was a Bar, and he relied on Saffin's Caſe, 5 Rep. 124, where a Diverſity is taken between a Leaſe that commences immediately, tho' the Leſſee doth not enter, and a Leaſe to commence in futuro: For in the firſt Caſe a Fine and Non-claim is a Bar, but not in the ſecond.

The Reaſons given why not barred.

Williams: This is no Bar, unleſs the Intereſt to be barred was turned to a Right before the Fine levied, (a) which is not here done; for the Fine here is levied in Affirmance of the former Eſtate of the Leſſee, and the Leſſor is in Poſſeſſion upon a Privity which protects the Leſſee's Intereſt, and the Fine doth not work a Tort, nor will the Court preſume or intend a Tort, if it may be taken otherwiſe, as in Fermor's Caſe, 3 Rep. 1. Cro. Car. 484. pl. 7. 304. pl. 6. Blunden and Baugh's Caſe.

*Nota*; Where the Entry is gone, and only a Right of Action left, there a Warranty ſhall bind; but it ſhall not bind where there is a Right of Entry.

A Warranty will bind where only a Right of Action is left; but not where there is a Right of Entry.

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(a) No Fine nor Warranty ſhall bar any Eſtate in Poſſeſſion, Reverſion or Remainder, which is not devested and put to a Right; for he who hath the Eſtate or Intereſt in him, cannot be put to his Action, Entry or Claim; for he hath that already, that Entry, Action or Claim, can give him. 9 *Rep.* 106. *a.* 10 *Rep.* 95. *b.* 96. *a.* 1 *Sid.* 459. 2 *Inſt.* 517. *Cro. Ja.* 60. 5 *Co.* 124. 1 *Vent.* 81.

The Reaſons given by the Court, why the Fine is no Bar to the Leaſe.

Hale Ch. Baron. Nothing here has been done whereby the Leſſee's Eſtate was diſplaced; The Leſſor continued the Poſſeſſion by the Leſſee's Permiſſion, and ſo is Tenant at Will. The Fine here doth not diſplace the Eſtate, as where there is Leaſe for Years, the Remainder for Life; Leſſee for Years levies a Fine, and the five Years paſs; the Leſſor is not barred by Non-claim, becauſe the Fine operates nothing, and partes finis nil habuerunt may be pleaded to it; otherwiſe it is where Tenant for Life levies a Fine; for he hath a Freehold, and his Fine diſplaces the Remainder, and therefore an Entry is requiſite within the five Years after the Death of the Tenant for Life.

And therefore where Leſſee for Years, or at Will, is to levy a Fine, it is uſual for the Leſſee to make a Feoffment firſt to diſplace the other Eſtates.

But here the Leaſe for Years is antecedent to the Eſtate of the Leſſor who levied the Fine, and he has a Freehold expectant upon a Leaſe, and not precedent to it. And a Fine with five Years Non-claim, muſt bar an Eſtate precedent, not ſubſequent to the Fine: Alſo here is a Privity between the Leſſor and Leſſee, and therefore the Fine ſhall not bar *. Hardreſs 402.

Raym. 140. *Corbet* verſus *Stone*.

Alſo this is like the Dutcheſs of Richmond's Caſe, where it was adjudged,

1. That a Fine ſhall not bar by Reaſon of the Privity between the Perſons.

2. Becauſe the Leſſor was in the Nature of Tenant at Will, and there was a mutual Confidence between the Parties. Hardreſs 402.

*A* by Bargain and Sale mortgages to B. in Fee, Proviſo not to take Poſſeſſion till Default: Bargainee does not enter; and Bargainor lets the Land. Leſſee entered, paid his Rent, and ſurrendered at the End of the Term. Bargainee deviſes the Mortgage to *J. S.*

A. makes a Mortgage to B. by Way of Bargain and Sale in Fee; and there was a Proviſo, That the Bargainee ſhould not meddle with the actual Poſſeſſion until Default of Payment.

(a) The Bargainee did not enter; the Bargainor (before any Day of Payment) lets the Land, the Leſſee entered and claimed nothing but the ſaid Term, and paid his Rent to the Bargainor, and ſurrendred at the End of the Term the Tenements to him, who entered; the Bargainee made his Will, and deviſed this Mortgage to J. S.

(a) Had it been a Covenant or Agreement inſtead of this Proviſo, then it would have amounted to a Leaſe for Years in the Bargainor from the Bargainee. *Cro. Jac.* 659, 660. *pl.* 9. 172.

If it had been a Covenant, it would amount to a Leaſe for Years in the Bargainor.

Admit-

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* As in the Caſe of Mortgage, where the Mortgagor continuing the Poſſeſſion levies a Fine. *Hardr.* 402.

The Queſtion was, Whether the Bargainor's Leaſe was a Diſſeiſin? if a Diſſeiſin, Whether Bargainor's Re-entry did not purge it?

Admitting that the Bargainor was not Tenant for Years, but only Tenant at Will, or Tenant at Sufferance to the Bargainee, whether this Leaſe for Years, and the Leſſee's claiming nothing but the Term, and yielding up of the Poſſeſſion to the Bargainor, ſhall be a Diſſeiſin? And if a Diſſeiſin, whether not purged by the Re-entry of the Bargainor? Cro. Jac. 659, 660. pl. 9.

Adjudged, if it was a Diſſeiſin, yet on the Re-entry the Diſſeiſin was purged.

The Opinion of the Judges was, That when the Bargainor entered and made the Leaſe, if he was a Diſſeiſor, (for it was not intended to be a Diſſeiſin) yet when the Term expired, and the Bargainor re-entred, that purged the Diſſeiſin, and the Bargainor is in as he was before, and the Inheritance reveſted in the Bargainee. Cro. Jac. 660. pl. 9. 1 Jones 316. Cro. Car. 222. 1 Roll. Abr. 661.

The Law will not conſtrue it to be a Diſſeiſin, when none of the Parties intended it to be ſo. Cro. Car. 303. Blunden and Baugh's Caſe.

A Diſſeiſin, *quid.*

A Diſſeiſin is an Entry intending to uſurp the Poſſeſſion, and to ouſt another of his Freehold, and therefore quærendum eſt a Judice quo animo hoc fecerit; (a) and it is at the Election of him to whom the Wrong is done, if he will allow him to be a Diſſeiſor, or himſelf out of Poſſeſſion; as if one receives my Rents, I may bring an Aſſize, or have an Account; ſo where an Infant lets a Leaſe, and the Leſſee enters, he may bring his Aſſize, or accept the Rent at full Age. Cro. Car. 303. Blunden and Baugh's Caſe.

On a Leaſe by an Infant, he may bring an Aſſiſe, or accept the Rent at full Age.

So if a Copyholder leaſe for Years contrary to Cuſtom, it is no Diſſeiſin.

So where a Copyholder makes a Leaſe for Years not warranted by the Cuſtom, yet it is no Diſſeiſin. Cro. Car. 304. pl. 6.

Where Tenant at Will grants a greater Eſtate than he can make, it is a Diſſeiſin.

When Tenant at Will takes upon him to make a Leaſe for Years, (which is a greater Eſtate than he may make) that Act is a Diſſeiſin, and by this Leaſe for Years made, and the Leſſee's entering and paying of the Rent, and he accepting thereof, he is in as Leſſee, and the Leſſor (b) is the Diſſeiſor, and hath the Re-

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If Feoffor after Feoffment enter and leaſe for Years, it is a Diſſeiſin.

(a) Where the Feoffor after the Feoffment enters and takes the Profits, and makes a Leaſe to one for Years, the Law doth, upon this whole Matter, adjudge it to be a Diſſeiſin; although the Intent of the Parties was, that the Feoffee ſhould make a Leaſe to him for his Life. 2 *Rep.* 59. *b.*

For this Entry by Tort and taking of the Profits, without the Agreement of the Feoffee, is a Diſſeiſin; *a fortiori*, if he takes upon himſelf to make a Leaſe. *Ibid.*

(b) *Viz.* The Tenant at Will who makes the Leaſe for Years.

verſion expectant upon the Leaſe for Years; (a) and this Leaſe between them is an Intereſt derived out of the Inheritance gained by the Diſſeiſin. (b) Cro. Car. 304. pl. 6.

What this Intereſt is, and how gained.

(a) It was argued by *Richardſon*, That it being but a Leaſe for Years, it hath gained no Reverſion to the Leſſor; but if it had been a Leaſe for Life, it had. *Cro. Car.* 306. *pl.* 6.

(b) This is a good Leaſe between the Parties, and Debt lies for the Rent, and the Leſſee ſhall not avoid it but by Ouſter. *Cro. Car.* 304, 305. *pl.* 6.

The Inconvenience of adjudging Leſſor diſſeiſed, on his levying a Fine, after his Tenant at Will has leaſed for Years, unknown to him.

If one who has a Tenant at Will, who makes a Leaſe for a ſmall Time, and the firſt Leſſor not knowing thereof, levies a Fine for a Jointure for his Wife or other Uſes; if he ſhould be adjudged diſſeiſed, and as a Diſſeiſee to levy a Fine which ſhould tend to the Benefit of the Leſſee for Years, and be adjudged a Diſſeiſor againſt his Intent or Knowledge, as in this Caſe is pretended, many would loſe their Inheritances. Cro. Car. 305. Blunden and Baugh's Caſe.

A Fine levied after a ſecret Diſſeiſin, ſhall not enure to the Diſſeiſor.

A Man after a Diſſeiſin knowing nothing of it, levies a Fine to a Stranger, whether that ſhall bar his Right according to Buckley's Caſe. 2 Rep. 56. a. (c) If this were admitted, it would be of miſchievous Conſequence; and per Croke and Bramſton, it ſhall not enure to the Benefit of the Diſſeiſor, but to the Uſe of the Conuſor himſelf; for otherwiſe a Diſſeiſin being ſecret, may be the Cauſe of diſinheriting of any Perſon who intends to levy a Fine, for his own Benefit, for Aſſurance of his Lands upon his Wife, Children or otherwiſe. Cro. Car. 484. pl. 7. and 306. pl. 6.

(c) Which ſays, That if the Diſſeiſee levies a Fine to a Stranger, that in this Caſe, the Diſſeiſor ſhall retain the Land for ever; for the Diſſeiſee cannot claim the Land againſt his own Fine, and the Conuſee cannot enter; for the Right which the Conuſor had cannot be transferred to him: But by the Fine, the Right is extinguiſhed, whereof the Diſſeiſor ſhall take Advantage. 2 *Rep.* 56. *a.*

Tenant for Life leaſes for Years, and after leaſes for Life, *Habend.* from *Michaelmas*, and Leſſee for Years attorns, and after levies a Fine to the ſecond Tenant for Life, and he in Remainder entered.

Tenant for Life, Remainder in Fee; the Tenant for Life leaſes for four Years, and the Leſſee enters, then the Tenant for Life makes a Leaſe for Life, Habendum from Michaelmas next following; after the Feaſt the Leſſee for Years attorns, his Leaſe expires; the ſecond Tenant for Life leaſes at Will, the firſt Tenant for Life levies a Fine ſur Conuſance, &c. to him, and he in Remainder enters; and held that he well might.

The Leaſe for Life, is void.

And it was adjudged, 1. That the Leaſe to the ſecond Tenant for Life was void, it being to commence in futuro.

So the Attornment paſſed not the Reverſion.

2. That the Leaſe being void, the Attornment after Michaelmas ſhall not make the Reverſion to paſs, for quod ab initio non valet, &c. 2 Rep. 55. a. b. 2 And. 29. Mo. 423. Cr. Eliz. 450, 585. Hob. 170, 171. 5 Co. 94. 1 Roll. Rep. 261.

And Leſſee for Life entring by the void Grant, is a Diſſeiſor.

3. When the ſecond Leſſee for Life entered by Virtue of the void Grant, he is a Diſſeiſor.

And a Diverſity was taken between a Grant made by Agreement of the Parties, which ſtands not with the Rules of Law, nor can be made good by any ſubſequent Act, as Attornment, Livery, &c. and a Grant good at Commencement, but to have its Perfection by a ſubſequent Ceremony, as in Caſe of a Feoffment, if the Feoffee enters before Livery, he is not a Diſſeiſor.

(a) He ſhall be Tenant at Will.

(a) 2 Rep. 55. a. b.

If a Fine is levied to a Diſſeiſor, he in Remainder may enter.

4. If the Fine had been levied to the Diſſeiſor himſelf, he in Remainder might enter for the Forfeiture; for the Right of a particular Eſtate may be forfeited, and Entry given to him who hath but a Right to the Remainder; as if Leſſee for Years is ouſted, or Leſſor for Life diſſeiſed, if Leſſee for Years bring an Aſſiſe, or Leſſee for Life a Writ of Right, this is a Forfeiture.

5. This Fine levied to the Tenant at Will is a Forfeiture, and he in Remainder may enter upon the Tenant at Will, and purge the Diſſeiſin; and both Tenant for Life and Tenant at Will ſhall be eſtopp'd to ſay, Partes finis, &c. And of Eſtoppels upon Record which go to their Diſinheriſon, they ſhall, although they are not Parties, take Advantage; for he is privy in Eſtate to take Advantage of any Matter of Record done to his Diſinheriſon. 2 Rep. 55. b. 56. a.

Where the Mortgagor continues Poſſeſſion, levies a Fine, pays the Intereſt, and 5 Years paſs, it ſhall not bar the Mortgagee.

If a Mortgagor continues the Poſſeſſion, levies a Fine, and five Years paſs, and he pays the Intereſt to the Mortgagee after the Fine and five Years; this Fine and Non-claim doth not bar the Mortgagee, he being out of Poſſeſſion. 1 Sid. 460. Noy Rep. 23. Hard. 401. 1 Vent. 82. 1 Lev. 272.

# Entry.

## *See* Leaſe and Releaſe.

What an Entry is.

An Entry is where a Man enters perſonally, or another by his Order, into any Lands, Tenements and Hereditaments, to which he hath a Title of Entry, and takes Poſſeſſion of them. See Terms de la Ley 311.

How an Entry ſhall be guided.

*Note*; If an Entry is made to a ſpecial Purpoſe, ſuch Entry ſhall be guided by the Intent, and tied up to that ſpecial Purpoſe: As if it is agreed between Diſſeiſor and Diſſeiſee, that the Diſſeiſee ſhall releaſe all his Right to the Diſſeiſor upon the Land, and accordingly the Diſſeiſee enters into the Land, and delivers a Releaſe; there this is a good Releaſe; and the Entry of the Diſſeiſee being for this Purpoſe, doth not avoid the Diſſeiſin. *Co. Litt.* 49. *b.*

How it muſt be, where it is to veſt or deveſt an Eſtate, where there muſt be ſeveral Entries.

Where an Entry ſhall veſt or deveſt an Eſtate, (a) there muſt be ſeveral Entries (b) into the ſeveral Parcels of the Land in the ſeveral Tenants or other Perſons Poſſeſſions. (c)

(a) If the Lands are in the Poſſeſſion of ſeveral Perſons.

A Freehold cannot ceaſe without an Entry.

(b) Regularly a Freehold or Inheritance cannot ceaſe without Entry or Claim. *Co. Litt.* 218. *a.*

How to avoid a Fine of Land in two Counties.

(c) Where an Entry is made to avoid a Fine, an Entry into Part of the Lands in one County in the Name of all the Lands in that and the other County, and that Part, into which the Entry is made, was not compriſed in the Fine, this Entry is void. *Hardr.* 400, 401.

Where an Entry into one Parcel reduces the Whole.

But where the Poſſeſſion is in no Man, but the Freehold in Law is in the Heir who enters, (d) there a general Entry into one Parcel

(d) Where the Anceſtor died ſeiſed.

(a) And

How to be into Parcel for a Condition broken.

Or for a Diſſeiſee.

How it is where one is ſeiſed of divers Parcels in Poſſeſſion, and the Freehold is caſt upon the Heir.

Where it reduceth but only one Parcel.

rel reduces the whole to him; (a) and therefore if the Feoffor, for a Condition broken, or a Diſſeiſee, enters into Parcel, the Entry ſhall not veſt or deveſt, but only for that Parcel: But where a Man dies ſeiſed of divers Parcels in Poſſeſſion, and the Freehold in Law is by Law caſt upon the Heir, and the Poſſeſſion in no Man, there the Entry into Parcel generally (b) will veſt the actual Poſſeſſion of the whole; but if he enters only into that Parcel and no more, (c) there it reduceth that Parcel only into actual Poſſeſſion. Co. Litt. 15. a. b.

Where the general Rule for Leaſe, Entry and Ouſter, in an Ejectment, is ſufficient.

(a) And I take it, that on an Ejectment brought by the Heir at Law, the general Rule of Leaſe, Entry and Ouſter is ſufficient; tho' not in the Caſe where an Eſtate muſt commence on an Entry, as upon a Condition broken. See 1 *Saund.* 319. 1 *Sid.* 233. 1 *Mod.* 10. 1 *Vent.* 42, 332. 2 *Keb.* 218. 1 *Salk.* 246. *Skin.* 424.

In the Name of all the Lands within all the Towns of the ſame County.

(b) In the Name of all the Lands and Tenements in which he hath a Right to enter, within all the Towns of the ſame County. *Litt. Sect.* 417. *Hardr.* 400, 401. but ſhall not extend to another County.

(c) Without ſaying in the Name of the whole.

His Entry to recontinue his Inheritance muſt enſue his Action.

How it muſt be where three Men diſſeiſe me of three ſeveral Cloſes.

Where the Entry muſt be ſeveral.

The Entry of a Man to recontinue his Inheritance, muſt enſue his Action, for the Recovery of the ſame; as if three Men diſſeiſe me of three ſeveral Cloſes all in one County, (d) and I enter into one in the Name of the three; this is good for no more but for that Cloſe which I entered into; becauſe each Diſſeiſor is a ſeveral Tenant of the Freehold; and as I muſt have ſeveral Actions againſt them for Recovery of the Land, ſo my Entry muſt be (e) ſeveral. Co. Litt. 252. b.

A Difference between a Feoffment and an Entry.

Where Entry into Lands within the View, cannot be made.

(d) There is a Difference between a Feoffment and an Entry; for a Man may make a Feoffment of Lands in another County, and make Livery within the View, altho' he might enter peaceably to make Livery. *Pollex.* 47. But a Man cannot make an Entry into the Lands, within the View, where he may actually enter without Fear; for it is one Thing to inveſt, and another to deveſt. *Co. Litt.* 252. *a. b.*

Where one Action will ſerve, tho' the Lands lie in ſeveral Places in one County, an Entry into Parcel in the Name of the Whole will do.

(e) In all Caſes where one Action will ſerve, *viz.* where the Freehold is all in one Perſon, ſo that your Aſſize muſt be brought againſt him, though the Lands lie in twenty Places (if all are in one County) an Entry into any Parcel in the Name of the whole will do. *Co. Litt.* 252. *b.*

Where a Houſe and Land are let, the Houſe is the Principal, and the Land is the Acceſſory.

Poſſeſſion of the Houſe is a good Poſſeſſion of the Land.

Leſſee for Years being in a Houſe, let with a Cloſe, the Leſſor enters into the Cloſe, and makes Livery; (Leſſee being in the Houſe) it is void as well for the Cloſe as the Houſe; for when a Houſe and Land are demiſed, the Houſe is the Principal, and the Land is the Acceſſory; and Poſſeſſion of the Houſe is a good Poſſeſſion of the Land; for the Tenant cannot be in Poſſeſſion of every Part of the Land at the ſame Time: But Poſſeſſion of the Houſe and ſome Part of the Land, is a good Poſſeſſion of the Reſidue. 2 *Rep.* 31. *b. Betſworth's* Caſe. *Moor pl.* 397. 2 *Roll. Abr.* 4. *Co. Litt.* 48. *b. Dyer* 18. *b. Bro.* Tit. *Feoffment*, 66. But *Moor* 11 *Cont*.

A Feoffment of two Acres, to a Man upon two ſeveral Conditions.

An Entry into one in the Name of both, is not ſufficient.

If I enfeoff one of one Acre of Land upon Condition, and afterwards I enfeoff the ſame Man of another Acre upon Condition, (both in one County) and both the Conditions are broken; here an Entry into one Acre in the Name of both, is not ſufficient; for that I have no Right to the Land, nor Action to recover the ſame, but a bare Title, and therefore ſeveral Entries muſt be made into the ſame, in reſpect of the ſeveral Conditions; but an Entry into one Part of the Land ſubject to one Condition is good, altho' the Parcels are ſeveral, and in ſeveral Towns. (a) Co. Litt. 252. b.

(a) *Note*; a Difference between ſeveral Rights of Entry, and ſeveral Titles of Entry, by Force of a Condition.

A Difference between ſeveral Rights of Entry and Titles of Entry.

Entry of a Husband to the Uſe of his Wife, or of another for an Infant: Where Entry lawful, and not.

If a Husband enters on Lands to the Uſe of his Wife; or a Man enters to the Uſe of an Infant, or any other, where the Entry is lawful: This ſettles the Poſſeſſion before the Agreement of the Parties. But it is otherwiſe where a Perſon enters to the Uſe of one whoſe Entry is not lawful. (b) 2 Danv. Abr. 787.

(b) For this veſts nothing in him 'till Agreement, and then he is a Diſſeiſor.

When nothing veſts by Entry.

Where the Entry of a Stranger of his own Head is good.

Where an Infant, or a Man of full Age, is diſſeiſed, an Entry by a Stranger, of his own Head, is good, and veſteth preſently the Eſtate in the Infant or Diſſeiſee. (c) So where Tenant for Life makes a Feoffment in Fee, a Stranger may enter for a Forfeiture, in the Name of the Reverſioner, and thereby the Eſtate ſhall be in him. Co. Litt. 245. a.

(c) Without any Commandment precedent, or Agreement ſubſequent. *Co. Litt.* 258. *a.*

Without any Commandment precedent, or Agreement ſubſequent.

But where there muſt be a Command precedent or an Agreement ſubſequent, to avoid a Fine.

But if a Diſſeiſor levies a Fine with Proclamations, a Stranger without a Command precedent, or Agreement ſubſequent, cannot, within the five Years, enter in the Name of the Diſſeiſee, to avoid the Fine; this was upon Conſtruction of the Statute

Statute of the 4 *H.* 7. but an Aſſent ſubſequent within the five Years will be ſufficient. *Co. Litt.* 253. *a. Poph.* 108.

By an Act made 4 & 5 *Anne.*

No Entry, or Claim to avoid a Fine, or ſave the Statute of Limitations, ſhall be of any Force, unleſs an Action be commenced and proſecuted with Effect, within one Year after ſuch Entry or Claim.

**Now by an Act made** 4 & 5 Ann. **it is enacted, That no Claim, or Entry to be made upon Lands, Tenements or Hereditaments, ſhall be of any Force or Effect, to avoid any Fine levied with Proclamations * according to the Form of the Statute in that Caſe provided, in the Queen's Court of Common Pleas at** Weſtminſter, **or the Court of Seſſions in any of the Counties Palatine, or in the Courts of the Grand Seſſions in** Wales, **of any Lands, Tenements or Hereditaments, or ſhall be a ſufficient Entry or Claim, within the Statute made in the twenty-firſt Year of King** James I. **Intituled,** an Act for Limitation of Actions, and for avoiding Suits in Law, **unleſs upon ſuch Entry or Claim, an Action ſhall be commenced within one Year next after making ſuch Entry or Claim, and proſecuted with Effect.**

* *Note*; This doth not extend to other Fines.

Statute of Limitation, 21 *Jac.*

How it is upon a Condition, where the Words are *that the Eſtate ſhall ceaſe.*

**Where the Words of a Condition (in Caſe of an Inheritance) are,** that the Eſtate **ſhall** ceaſe and be void, (a) **yet an Eſtate in Lands and Tenements* cannot ceaſe and be void before the Eſtate is defeated by Re-entry.** (b) Co. Litt. 379. a.

* Which is a Freehold.

The Diverſity between a Condition and a Limitation.

(a) There is a Diverſity between a Condition and a Limitation; for a Limitation determines an Eſtate without Entry or Claim, but a Condition doth not. 2 *Rep.* 53. *b.*

An Inheritance cannot be determined by Condition, without Entry or Claim.

(b) An Eſtate of Inheritance cannot be determined by Condition without Entry or Claim. 2 *Rep.* 53. *b.*

Where a Claim of a Rent ought to be made.

**Claim of a Rent by Force of a Condition, ought to be made upon the Land.**

A Claim muſt be made upon the Land.

**A Claim off from the Land will not be ſufficient.** 2 Rep. 54. a. **And therefore, where a Deed of Bargain and Sale is made off from the Land,** (c) **that will not be good to make a Claim, and then paſs a Remainder.** (d) 2 Rep. 24. a.

A Bargain and Sale made off from the Land will not make a Claim, and paſs a Remainder.

Where a Bargain and Sale puts the Bargainee into Poſſeſſion, ſo that he may releaſe.

(c) But where a Man is in Poſſeſſion of an Eſtate, and makes a Deed of Bargain and Sale, this upon ſealing of the Deed before Entry, ſo far puts the Bargainee into Poſſeſſion, that he may releaſe, or do any Thing but bring an Action of Treſpaſs. *Vide* Title *Bargain and Sale*, and *Leaſe for a Year.*

Where he that comes in by Act in Law, hath the Poſſeſſion before Entry.

But he who comes in by Act of Law, as Tenant by *Elegit*, or Statute, *&c.* after the Land extended and before Entry, has the Poſſeſſion; for before actual Entry he may bring Treſpaſs, and ſo it is not like an *Intereſſe Termini.* 1 *Mod. Rep.* 217.

(d) But the Deed muſt be actually ſealed upon the Land.

Where Truſtees for Years never entered, but ſuffered *Ceſtuy que Truſt* to take the Profits.

Where an Eſtate for Years, raiſed out of the Lands of Inheritance, is in Truſtees, who were never in Poſſeſſion, but ſuffered the Ceſtuy que truſt to receive the Profits during his Life, and the Adminiſtrator of Ceſtuy que truſt (who had no Right to enter) enters, and keeps Poſſeſſion.

How the Truſtees may aſſign over this Term.

Subject to thoſe Truſts.

And the Heirs at Law have prevailed with the Surviving Truſtee to aſſign over to a Perſon in Truſt for them, the Term of Years upon Truſt, that the Aſſignee ſhall perform ſuch Truſts as the ſame Term is ſubject to.

How to execute a Bargain and Sale of this Term upon the Land.

If the Grantor cannot be upon the Land himſelf to do it, then how it muſt be done.

By Letter of Attorney.

When and where to be delivered.

Now a Bargain and Sale of the Term to the Aſſignee of the Term, (a) will not paſs the Eſtate, unleſs the ſame is ſealed upon the Land; and to that Purpoſe, if the Grantor cannot be upon the Land, to deliver the Deed himſelf, then he muſt ſign and ſeal (but not deliver) the Deed of Aſſignment (b) and then make a Letter of Attorney of the ſame Date, to ſome Perſon to enter upon the Land and take Poſſeſſion for him, and then being in Poſſeſſion, the Attorney to deliver the Deed upon the Ground, as the Act and Deed of the Grantor.

Where the Bargainor is not in Poſſeſſion.

(a) When the Bargainor is out of Poſſeſſion: So alſo of a Bargain and Sale of Inheritance. 3 *Lev.* 387, 388, 312. 1 *Lev.* 270, 271, 272.

How the Deed muſt be indorſed.

Where to be delivered.

(b) Alſo the Deed muſt be only indorſed at the firſt thus, Signed and Sealed but not delivered by the within written *A. B.* If the Deed is ſigned, ſealed and delivered off from the Land, the Delivery upon the Land afterwards by the Attorney will ſignify nothing. *Cro. El.* 483. *pl.* 19.

How it is where it was delivered as an Eſcrow.

The ſecond delivery makes it a Deed.

But where a Leaſe was delivered off from the Land as an Eſcrow to a Stranger, commanding him to enter upon the Land, and there deliver it as his Deed; and moved that this was void; for that when it is delivered as an Eſcrow, and afterwards delivered upon the Land, as the Deed of the Diſſeiſee, that hath Relation to the Time of delivering it, as an Eſcrow, at which Time he had but a Right to the Lands, not having entered; but *per Anderſon* Ch. J. It is a good Leaſe, for it is not his Deed till the ſecond Delivery. *Cro. El.* 446, 447. *pl.* 11.

The Manner of Entry into Lands, taking Poſſeſſion, and executing of a Deed upon the Land

The Manner of the Entry and taking of Poſſeſſion, and executing of the Deed, muſt be as followeth.

How it is where there are ſeveral Houſes and ſeveral Parcels of Land in the Poſſeſſion of ſeveral Perſons.

If there are ſeveral Houſes and ſeveral Lands in the Poſſeſſion of ſeveral Tenants or Perſons, you muſt make your Entry at every Houſe, and ſay theſe Words, I do here enter and take Poſſeſſion of this Houſe, and the Land therewith uſed, to the Uſe of *A. B.*

The Words of the Entry.

How the Entry into Lands without an Houſe.

You muſt leave a Man upon the Ground.

How the Attorney muſt deliver the Deed upon the Ground.

The Form of the Letter of Attorney.

After the Delivery the Witneſſes to ſet their Names.

When the Writing is delivered, you muſt take away all the Men from the Places where you left them to keep Poſſeſſion.

They muſt not ſtir off from the Ground till you fetch them.

If there is Land let without the Houſe, then you muſt enter in at the Gate of the Cloſe, and make your Entry in the Manner aforeſaid; and to this Entry you muſt have two or three or more Witneſſes, and leave a Man upon the Ground, to keep the Poſſeſſion for you, till you are gone; and when you have done the ſame, and left a Man upon the Ground to keep Poſſeſſion for you, at every one of the Houſes, or Parcels of Lands (if in the Poſſeſſion of the ſeveral Perſons) but the laſt Houſe or Parcel of Land that you go to, and when at the laſt Houſe, or Parcel of Land, when you have made your Entry, you muſt (viz. the Attorney) ſay, that by Virtue of the Letter of Attorney (a) made to me for that Purpoſe, I deliver this Writing (you then ſtanding upon the Ground) as the Act and Deed of the Grantor; and then you muſt make a Memorandum on the Back of the Deed, that (ſuch a Day) by Virtue of a Warrant of Attorney to you made and directed, bearing Date, &c. you did enter into, &c. (put in the Words of the Authority given in the Letter of Attorney) and let the Witneſſes ſet their Names thereto, as Witneſſes; when this is done, go to every one of the Places, where you left the ſeveral Perſons to keep the Poſſeſſion, and take them away with you: You muſt take Care they do not ſtir off from the Ground, till you fetch them off. See Winch 50. in the Middle of the Folio, at the Word *Nota*.

How an Entry muſt be made upon a Condition broken.

Where an actual Entry ought to be made, to avoid a Condition, &c. there the Confeſſion of Leaſe, Entry and Ouſter will not do. 1 Ventr. 332. 1 Saund. 319. 1 Sid. 233.

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(a) The Form of a Letter of Attorney is as follows:

After a ſhort Recital of the Writing to be delivered (muſt not ſay Indenture of Demiſe, *Dan.* 665. but only Writing.)

Now know Ye, that I the ſaid *A. B.* have conſtituted, ordained, made and put, and in my Stead and Place do by theſe Preſents ordain, conſtitute, make and put *C. D.* of, *&c.* my true and lawful Attorney, for me and in my Name to enter into, and take Poſſeſſion of the ſaid Manor, Meſſuages, Lands, Tenements, Hereditaments, and all and ſingular other the Premiſſes in the before recited Writing mentioned; and alſo when he hath ſo taken Poſſeſſion for me, and in my Name, and as my Deed to deliver the herein before mentioned Writing, as my Act and Deed, to the Uſe of the ſaid *E. F.* as fully and wholly, as I the ſaid *A. B.* could or might do the ſame in my own Perſon; hereby ratifying and confirming what my ſaid Attorney ſhall lawfully do herein. *In Witneſs*, &c.

233. 1 Mod. 10. 1 Vent. 42. 3 Keb. 218. 1 Salk. 246. Skin. 424. Ante Page 125.

Where a Rent-Charge is to be demanded.

A Diſtreſs is a Demand.

When a Demand muſt be made for a Penalty or Re-entry.

A Rent-Charge is not a perſonal Duty, to be demanded of the Perſon, but upon the Land, and a Diſtreſs is both a Demand and a Diſtreſs; and the Party may demand it at any Time; (a) but where a Penalty or Re-entry is joined to the Thing, there you cannot take Advantage of the Pain or Forfeiture without a Demand at the very Time prefixt. Hob. 207. Hutt. 42, 114. Hob. 331. 7 Co. 56. b. Hutt. 13, 23. 2 Roll. Abr. 42. 6 Mo. 883. Dyer 51. Plowd. 70. (b)

Where a Demand to be made before a Diſtreſs.

(a) Where a Rent is granted, payable at a certain Day, and if it be behind, and unpaid, the Grantee ſhall diſtrain for it: The Grantee need not to demand it at the Day, but at any Time after it is due, which will be ſufficient; for the Grantee may demand it when he will, to enable him to diſtrain. *Co. Litt. 202. a.*

A Bailiff without Order cannot enter for Non-payment of Rent.

(b) A Bailiff, without a particular Authority for that Purpoſe, cannot enter for Non-payment of Rent. *Hob. 154. 5 Rep. 76. a.*

A Feoffment reſerving Rent upon a Condition of Re-entry.

Where a Feoffment is made reſerving a Rent upon Condition, that if the Rent is behind, it ſhall be lawful for the Feoffor and his Heirs to enter. (c) Now if the Rent be behind, the Feoffor or his Heirs may enter and ouſt the Feoffee. Litt. ſect. 325. Co. Litt. 201. b. 202. a. Hob. 207. 5 Co. 56. Dyer 51. Hob. 331.

Tho' the Words are, *That the Leaſe ſhall be void*, it ſhall not be void without a Demand and a Re-entry.

(c) If the Words of a Leaſe for Years be, *That the Leaſe ſhould be void*, yet the Non-payment is no Avoidance without a Demand and a Re-entry.

The ſeveral Things to be obſerved in Caſe of a Demand of Rent.

Theſe Things are to be obſerved in Caſe of a Demand for Rent.

1. Tho' the Rent is behind, yet if the Feoffor or his Heirs do not demand it, (d) he ſhall never re-enter; for the Land is the principal Debtor, and the Rent iſſues out of the Land. Co. Litt. 201. b.

How to demand Rent for a Recovery.

(d) In Caſe of an Entry for a Condition broken on the Non-payment of Rent, you ought to demand but the laſt Quarter's Rent, and not all the Rent due; For the Default of any one Quarter's Rent (upon Demand) gives a Title of Entry.

Where the Demand muſt be made.

2. The Demand muſt be upon the Land, the Land being the Debtor, and that being the Place appointed by the Law. Co. Litt. 201. b.

How it muſt be where there is an Houſe.

3. If there is a Houſe upon the Ground, the Demand muſt be at the Fore-door of the Houſe, (a) that being the moſt notorious Place, and

Need not come further than the Door to demand it.

(a) Nay, if the Door be open, and the Party in his Hall, and it is no Matter whether any Body be there or no. Co. Litt. 201. b.

Hall, or other Part of his Houſe, yet the Feoffor need not to come any further than the Door. *Co. Litt.* 201. *b.*

Where it muſt be if it be a Cloſe or a Wood.

If a Cloſe or a Wood is let, the Demand muſt be made at the Gate. Co. Litt. 202. a.

How it is where made payable off from the Land.

If a Rent is appointed to be paid at any Place off from the Ground, the Demand muſt be made at the Place appointed by the Parties, obſerving the moſt notorious Place. Co. Litt. 202. a.

Tender of the Rent.

If the Feoffee tenders the Rent to the Feoffor upon the Land on the Day of Payment, that ſaves the Condition; but if the Feoffor doth not ſee him, then he muſt ſtay upon the Land ſo long before and after Sun-ſet, as he may tell ſo much Money as the Rent comes to, to diſtinguiſh it from bad: And the Feoffor muſt there make his Demand in this Manner, viz. I do hereby demand 10 *l.* due to me, for a Quarter's Rent, or Half a Year's Rent, as the Caſe is, for this Houſe, at *Mickaelmas* laſt, and not yet paid; after which Words ſpoken, he muſt continue there until it is ſo dark, that he cannot diſtinguiſh good Money from bad (a). Co. Litt. 202. a.

Words of the Demand of the Rent, and where to be made.

(b) The Party who takes Advantage by the Condition, ought to attend during the whole Day. *Bro. Abrid.* Title *Entry*, *pl.* 2. *Sed quære.*

The Feoffee ought to attend all Day.

A general Entry for one Tenant in common, is an Entry for all the reſt.

A general Entry by one Tenant in Common, is an Entry for all the reſt. Carter 176.

An Entry is a good Execution of a Recovery.

An Entry ſhall be intended to be a good Execution of a Recovery without a Writ of Seiſin. Jones 20.

The uſual Conveyance at Common Law, was Feoffment with Livery.

But where Livery could not be made, then it was by a Grant of the Reverſion.

Then came a Leaſe and Releaſe.

Afterwards Uſes came to be frequent.

Then came the 27 *H.* 8. which united the Uſe and the Poſſeſſion.

The uſual Conveyance at Common Law was by Feoffment, to which Livery and Seiſin was neceſſary, the Poſſeſſion being thereby given to the Feoffee; but if there was a Tenant in Poſſeſſion, ſo that Livery could not be made, then the Reverſion was granted, and the particular Tenant always attorned; and upon the ſame Reaſon it was, that afterwards a Leaſe and Releaſe was held a good Conveyance to paſs an Eſtate; but at that Time it was made no Queſtion, but that the Leſſee was to be in actual Poſſeſſion by Entry before the Releaſe: Afterwards Uſes came to be frequent, and Settlements to Uſes very common, which introduced many Inconveniencies, to prevent which, the Stat. of 27 H. 8. was made, which was by uniting of the Uſe to the Poſſeſſion; for before that Statute, Uſes were to be executed according to the Rules of Equity, but now they are reduced to the Common Law, and therefore are to be conſtrued according to the Common Law.

How a Reverſion was granted at Common Law, on Entry of Leſſee.

At the Common Law, when an Eſtate did not paſs by Feoffment, the Vendor made a Leaſe for Years, and the Leſſee actually entered, and then the Leſſor granted the Reverſion to another, and the Leſſee attorned.

How an Inheritance was afterwards granted.

Afterwards when an Inheritance was to be granted, then alſo a Leaſe for Years was uſually made, and the Leſſee entered as before, and then the Leſſor releaſed to him, and this was good.

How Leaſe and Releaſe came to be practiſed.

After the Statute of Uſes, it became an Opinion, that if a Leaſe for Years was made upon a valuable Conſideration, a Releaſe might operate upon it, without actual Entry of the Leſſee; But becauſe there were ſome Opinions that where Conveyances may enure two Ways, the Common Law ſhall be preferred, unleſs it appear, that the Party intended it ſhould paſs by the Statute; thereupon the uſual Courſe was, to put in the Words *Bargain* and *Sell* into the Leaſe for a Year, to bring it within the Statute, and ſo alledge, that by Virtue thereof, and of the Statute for transferring Uſes into Poſſeſſion, the Leſſee might be capable of a Releaſe.

To the Intent that by Virtue of the Statute, &c.

Leaſe and Releaſe are but one Conveyance.

The Leaſe and Releaſe are but one Conveyance, and the Intent of the Parties is apparent, that it ſhould paſs by the Statute.

How Leaſe and Releaſe, at the Common Law is.

The Caſe put by *Litt. ſect.* 459. is put at the Common Law, where he ſays, That if a Leaſe is made for Years, and the Leſſor releaſes to the Leſſee, before Entry ſuch Releaſe is void; becauſe the Leſſee had only a Right, and not the Poſſeſſion, which is an *Intereſſe Termini*, and ſuch Releaſe ſhall not enure to enlarge the Eſtate without the Poſſeſſion; which is true at Common Law, but not now upon the Statute of Uſes. 2 *Mod.* 250, 251, 252, 253. *per* North *C. J. Vide Co. Litt.* 46. *b.* 270. *a. Plowd.* 142. *b.* 423. *a.* 5 *Co.* 124. *b. Cr. Ja.* 61. 2 *Mod.* 249. 2 *Vent.* 203, 204.

He is in Poſſeſſion who hath the Right on a bare Entry.

In Caſes of Entry upon Lands, a bare Entry on another, without an Expulſion, makes only a Seiſin; ſo that the Law will adjudge him in Poſſeſſion who hath the Right. 3 *Salk. Rep.* 135. *Salk.* 246. 1. *Sid.* 385.

Exception.

# Exception.

What an Exception is.

An Exception is a Thing taken out of the Deed, ſo that it paſſeth not, but is divided from the reſt of the Things granted, as if no Mention had ever been made of it in the Deed. See Cro. El. 372. pl. 19. Carter 99.

Where an Exception is void.

An Exception that croſſes the Grant, or is repugnant to it, is void. Hob. 72, 170. See Moor, Caſe 1236.

It is always of a Thing granted, and *in eſſe*.

The Exception is always of a Thing granted, and a Thing in eſſe, and not of a new Thing, which was not before mentioned or granted. Dy. 59. a. N° 11.

It excepts clearly, but a Saving doth not.

An Exception excepts clearly, but a Saving doth not. Carter 99.

A Saving never amounts to a Gift of any Thing.

A Saving never amounts to a Gift of any Thing. Raym. 359.

What an Exception out of an Exception, and a Saving out of a Saving is.

An Exception out of an Exception, or a Saving out of a Saving, makes a Thing as if it had never been excepted. Cro. El. 372. pl. 19.

If I leaſe, except *White Acre*, it's void for *White Acre*, as if no Leaſe had been made.

If I leaſe my Land, except White Acre, it is ſo void for White Acre, as if no Leaſe had been (a) made. Carter 99.

Where Leſſee for Years of a Manor, aſſigns over, excepting all Woods and Underwoods, this Exception is void, and why.

(a) But where Tenant for Years is Leſſee of a Manor, *&c.* and he aſſigns over his Term, he cannot except all Woods and Underwoods, for that he hath nothing to do with the Land; but had only a Term, which he hath paſſed away. 5 *Rep.* 12. *b.* 13 *Co. Rep.* 60. agrees, and *Cro. Jac.* 296. *pl.* 2.

But it is otherwiſe in Caſe of a Tenant for Life, and why.

But when Tenant for Life makes a Leaſe for Years, excepting the Woods, Underwoods and Trees, this is a good Exception, altho' he hath not any Intereſt in them, but as Leſſee; becauſe he is chargeable in an Action of Waſte. *Cro. Jac.* 296. *pl.* 2. See 5 *Rep.* 12. *b.* 13 *Co.* 60.

An Exception that goes to the whole Thing, is void.

An Exception that goes to the whole thing granted or demiſed, is a void Exception. Cro. El. 6. pl. 2. 244. pl. 1.

*Other than* will make an Exception.

Other than will make an Exception; as in the Statute of Fines, 4 H. 7. it concludes all Perſons, except Feme Coverts, other than thoſe that be Parties to the ſaid Fine, here Other than makes an Exception out of an Exception. Carter 99.

A Leaſe of all his Lands in B. other than *White Acre*, and his Lands in S. except *Black Acre* for twenty Years, Remainder to B. in Fee, except before excepted, *White Acre* ſhall paſs; and why.

If A. lets all his Lands in D. other than White Acre, and all his Lands in S. except Black Acre, for twenty Years, the Remainder to B. in Fee, except before excepted, I hold, ſaith Tyrrell, that White Acre paſſeth, for the Grant ſhall be taken moſt ſtrongly againſt the Grantor. Carter 104.

Alſo ſee this Caſe.

A. lets the Manor of Sale, ſaving White Acre, (a) to B. the Remainder to C. for twenty Years, ſaving Green Acre, the Remainder of all to D. except Dry Acre, the Remainder to J. S. of all, except before excepted. I hold (ſaith Tyrrel) that all paſſes to J. S. except Dry Cloſe. Carter 104.

A Leaſe for Years excepting ſuch an Houſe, ſaving to the Leſſee a Room in it, the Leſſee ſhall enjoy the Room.

Yet (ſaith he) I grant that if A. ſell to B. all his Land in Sale, ſaving or reſerving, or other than White Acre, the Remainder to C. except before excepted; in this Caſe, White Acre is excepted, becauſe there is no Exception before, and the Exception would be vain and idle, if not ſo taken. Carter 104.

It is not the Nature of an Exception, to except a Thing not compriſed in the Grant.

It is not the Nature of an Exception to forepriſe a thing not compriſed in the Grant. Ibid.

A Leaſe excepting the Woods, Waſte will not lie, and why.

If a Leaſe is made, excepting the Wood and Timber, an Action of Waſte will not lie for it, for it was not demiſed. Dy. 19. a. pl. 110.

Feoffment to Uſes, except two Cloſes for the Feoffor's Life.

Theſe Cloſes deſcend to the Heir.

A Man made a Feoffment to diverſe Uſes, excepting two Cloſes, for the Life of the Feoffor only: It was adjudged, that theſe two Cloſes were excepted, and did deſcend, (b) either for that the Exception was good, tho' the later Part of the Sentence, viz. for the Life of the Feoffor only, was void, and therefore to be rejected; or the whole Exception was void, becauſe one intire Sentence; yet they all agreed, that there was no Uſe limited of theſe two Cloſes, which were intended to be excepted; for the Uſe was limited of the Manor, exceptis præexceptis, which excluded the two Acres; for altho' there were not ſufficient Words to except them, there was enough to declare the Intention of the Feoffor to be ſo. 1 Vent. 106, 107.

(a) *A.* Leaſes for Years to *B.* excepting ſuch a Houſe, ſaving to the Leſſee a Room in the Houſe, and held good. *Cro. El.* 372. *pl.* 19. And that the Leſſee ſhall enjoy the Room.

(b) To the Heir at Law.

Feoffment of a Manor, except *Bl. Acre* for Life, *Habendum*, except before excepted, to the Uſe of *D.* in Tail, *Bl. Acre* ſhall not paſs to B. in Tail.

**A Feoffment of a Manor, except** Black Acre, **to himſelf for Life only,** Habendum, **except before excepted, to the Uſe of** B. **in Tail,** Black Acre **ſhall not paſs to B. in Tail.** 1 Lev. 287.

A Grant of a Manor, excepting the Courts, is void.

**A Grant of a Manor excepting the Courts, is void, for a Manor cannot be without Courts** (a). Hob. 101.

(a) But a Man may grant a Manor, excepting any of the Demeſnes, and Services, ſo as a real Manor, not a reputative Manor, be left. *Hob.* 170.

But there may be an Exception of the Demeſnes.

A Man hath but one Cloſe in *D.* and grants all his Lands in *D.* but that one Cloſe, this Exception is void.

**If a Man hath but one Cloſe in** Dale, **and he grants all his Lands in** Dale, **excepting that one Cloſe, this Exception is void.** Hob. 170. Moor, Caſe 1239.

A Man ſells his Lands in *D.* except what he ſhall deviſe; this is void.

**One bargains and ſells his Land in D. except what he ſhall after deviſe, this is void.** Hob. 72.

Where by a Leaſe of the Lands, excepting the Woods, the Soil is excepted.

But it is not excepted by an Exception of all my Trees.

**If Woods, whereof a** Præcipe **lies (by the Name of ſo many Acres of Wood) are Parcel of a Manor, and I leaſe the Manor, excepting the Woods; by this the Soil is excepted:** (b) **But if I except all my Trees growing in the Manor, there by the Exception of the Trees, the Soil it ſelf is not excepted.** 11 Rep. 49. b. Poph. 146.

(b) By the Exception of Woods and Underwoods, the Soil it ſelf, whereon they grow, is excepted. 5 *Rep.* 11. *a. Poph.* 146.

The five Things which are obſervable in Exceptions.

**In theſe Exceptions of Woods and Trees, five things are obſervable.**

1. **That notwithſtanding they are excepted, they are Parcel of the Inheritance.** (c) 11 Rep. 50. a. 5 Rep. 11. a. b.

Where they will paſs by a Demiſe of the Manor, and where not.

(c) And by Demiſe for Years, of the Manor, they will paſs; becauſe the Freehold remains, and the Leſſor remains Tenant to the *Præcipe*; but by a Demiſe for Life, with ſuch Exception, *econtra.* 5 *Rep.* 11. *b.*

2. **That the Soil it ſelf is not excepted,** (d) **but ſufficient Nutriment for the Trees.**

(d) Where the Exception is of the Trees only.

3. **That the Leſſee ſhall have the Paſture growing under the Trees.** Vide Cro. Jac. 524. pl. 11.

4. **That the Leſſor ſhall have all the Benefit of the Trees.** 11 Rep. 50. a.

5. **He ſhall have the Fruits, and all other Profits of the Trees.** 11 Rep. 50.

No Man can except to himſelf what belongs to another.

No Man can except that to himſelf which belongs to another by Law. 5 Rep. 12. b.

A Leaſe of a Manor, except the Advowſon, the Advowſon is then become in Groſs.

If a Man makes a Leaſe for Life of a Manor, to which an Advowſon is belonging, and he excepts the Advowſon, if he grants over the Reverſion, the Advowſon ſhall not paſs; (a) becauſe it is ſevered and diſmembred from the Manor. 11 Rep. 50. a.

(a) It is then become an Advowſon in groſs.

How it is where a Man hath a Park and Fiſh-Ponds in his Manors, and lets it, excepting the Game and Fiſh.

If one has a Manor, in which he hath Parks and Fiſh-ponds, and he grants the Manor for Life, except the Game and Fiſh, and after grants the Reverſion of the Manor, by this the Game and Fiſh will paſs. 11 *Rep.* 50. *b.*

A Leaſe of a Farm called D. except one Cloſe called F. the Leſſee covenants to do ſeveral Things concerning the Premiſſes, this ſhall not extend to the excepted Cloſe.

A Man makes a Leaſe for Years, of a Farm called D, excepting one Cloſe by Name, and the Leſſee covenants to do ſeveral Things concerning the Premiſſes; the Word Premiſſes ſhall not extend to the Cloſe excepted, but only to that which is prædimiſſa. Ruſſell and Griſwell. Paſch. 42 El. 11 Rep. 50. b. 51. a. 1 Leon. 117.

Leſſor excepts his Trees, intending to ſell them; the Law gives the Buyer Power to enter and view, cut down and carry them away.

But he cannot dig Saw-pits.

Where the Leſſor excepts the Trees, and afterwards he intends to ſell them, the Law gives to him, and to thoſe who buy them, Power, as an Incident to the Exception, to enter and view the Trees, and ſo to cut them down and carry them away. (b) Lex eſt cuicunq; aliquis aliquid concedit, concedere videtur & id ſine quo res ipſa eſſe non potuit, is a Principle in Law. 11 Rep. 52. a. 13 Rep. 68.

(b) But he cannot dig Saw-pits in the Ground to ſaw the Timber there, without the Leſſee's Licenſe.

An Exception muſt be of a Thing ſeverable from, and not inſeparably incident to the Grant.

Exception muſt be of a thing which is ſeverable from, and not inſeparably incident to, the Grant. Dy. 59. a.

The Thing excepted muſt be a Particular out of a General.

The thing excepted, granted by ſpecial Name in the Premiſſes, is void; but it is good for a Thing granted in the Premiſſes by general Words; and altho' they are by ſpecial Name excepted, yet the Exception is void. Moor, Caſe 1236.

The Exception muſt be of Part of the Thing, and not of Part of the Eſtate.

The Exception muſt be of Part of the Thing, and not of Part of the Eſtate.

# Exchange.

Exchange, *quid*.

It muſt be by Deed indented, by the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3.

Good without Livery.

Exchange is where a Man is ſeiſed of certain Lands, and another Man is ſeiſed of other Lands; if they by Deed (a) indented, exchange their Lands, ſo that each ſhall have the other's Land ſo exchanged, in Fee, Fee-tail, or for Life; this is an Exchange, (b) and it is good without Livery. Litt. ſect. 62.

The Word *Excambium* imports a Condition and Warranty.

Four Things neceſſary in an Exchange.

Things neceſſary to the Perfection of an Exchange, are four:

1. Muſt be equal in Eſtate.

Unequal Value or Quantity impeaches not an Exchange, but unequal Eſtate does.

1. That the Eſtates granted in Exchange be equal (c), *viz.* in Eſtate.

2. The Word *Excambium* muſt be uſed.

2. That the Word Excambium be uſed, for that is abſolutely neceſſary.

3. Muſt enter into the Lands.

3. That there be an Execution of the Exchange by Entry (d), or Claim.

4. Muſt be by Indenture.

4. That it be by Deed indented, per Statute of Frauds and Perjuries, 29 Car. 2. cap. 3.

Will paſs by Deed without Livery.

It may be of Things which lie in Grant as well as of Land.

Lands will paſs by Exchange by Deed only, without Livery of Seiſin; and the Nature of it is, That where two Men are ſeiſed in Fee of Lands, and the one granteth (e) his Lands to the other in Exchange for his Land (f) which the other hath; and in like Manner the other granteth his Lands to the firſt Grantor, in Exchange for the Lands which the firſt Grantor hath, here each may enter

(a) It cannot be without Deed indented.

(b) In every Exchange, the Word *Excambium* imports tacitly a Condition and a Warranty; the one to give Re-entry in Caſe of Eviction, the other Voucher and Recompence. 4 *Rep.* 121. *a.*

(c) Unequal Value or Quantity in one more than in the other ſhall not impeach an Exchange; but unequal Eſtate ſhall. *Moor, Caſe* 909.

(d) If of Land. *Vide* 1 *Mod. Rep.* 91.

(e) This muſt now be by Deed indented ſince the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *cap.* 3. But before that Statute, if the Lands had lain all in one County, it might have been by Parol without Deed indented. *Litt. ſect.* 62.

(f) It may be of Things which lie in Grant as well as of Lands, *viz.* Advowſons,

ſons, Rents, Commons, *&c.* *Co. Litt.* 50. *a.*

A Releaſe of Rent in Fee for Land in Fee, is good.

There needs no Tranſmutation of the Poſſeſſion, and therefore a Releaſe of Rent, *&c.* in Fee, for Land in Fee, is good. *Co. Litt.* 50. *b.*

But Annuities cannot be exchanged for Land.

But Annuities, or ſuch Things which charge the Perſon only, but do not concern Lands and Tenements, cannot be exchanged for Lands and Tenements. *Ibid.*

Two Women make an Exchange with another, and one marries before Entry, it defeats not the Exchange.

(a) Two Women ſeiſed of an Acre of Land, and another Woman of another Acre, they make an Exchange, and one of the Women marries before Entry; this ſhall not defeat the Exchange: For the Power and Authority that each Perſon hath to enter is coupled with an Intereſt, and is not countermandable. *Parſons* and *Perne*, 1 *Mod. Rep.* 91.

## *The Form of the Deed.*

The Form of the Deed of Exchange.

**THIS Indenture made,** &c. **Between** E. M. **of,** &c. **of the one Part, and** J. P. **of the other Part, Witneſſeth, That the ſaid** E. M. **hath given and granted, and by theſe Preſents doth give and grant unto the ſaid** J. P. **his Heirs and Aſſigns, one Croft or Cloſe of Freehold Land, called or known by the Name of** B. **And alſo,** &c. **with all and every of their Appurtenances, ſituate, lying and being in** W, **in the County of** B. **for and in Exchange,** (b) **for all thoſe Lands, Tenements and Hereditaments of the ſaid** J. P. **called or known by the Name of,** &c. **in** W. **aforeſaid, in the ſaid County of** B. **To have and to hold the ſaid Croft or Cloſe,** &c. **to the ſaid** J. P. **his Heirs and Aſſigns for ever, for and in Exchange of and for the ſaid Lands, Tenements and Hereditaments called** W. **with the Appurtenances; and the ſaid** J. P. **hath likewiſe on his Part given and granted, and by theſe Preſents doth fully and abſolutely give and grant unto the ſaid** E. M. **his Heirs and Aſſigns, all thoſe Lands, Tenements and Hereditaments aforeſaid, with the Appurtenants, commonly called or known by the Name of** W. **ſituate, lying, and being in** W. **aforeſaid in the ſaid County of** B. **To have and to hold the ſaid Lands, Tenements, Hereditaments,** &c. **to the ſaid**

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(a) **into the other's Land ſo exchanged, without Livery of Seiſin.** Litt. ſect. 61, 62.

An Exchange cannot be expreſſed by any other Word.

(b) This Word *Exchange* is ſo appropriated by Law to this Caſe, that it cannot be expreſſed by any Periphraſis or Circumlocution. *Co. Litt.* 50. *b.* 4 *Rep.* 121. *a. b.*

E. M. his Heirs and Aſſigns for ever, for and in Exchange of and for the ſaid Croft or Cloſe of Land called B.

Muſt be equal in Eſtate, though not in Value or Quantity.

**What both Parties have in the Lands or other Things ſo exchanged, muſt be equal in Eſtate, but need not in Value or Quantity;** (a) **for if one exchangeth Lands in Fee-tail for Lands in Fee-ſimple, this Exchange is void.** Litt. ſect. 64, 65.

(a) *Viz.* The one ſhall have exactly the ſame Eſtate in the Land, *&c.* as the other had. But the Value of the Land is nothing to the Purpoſe; for the Value of the one may be more than the Value of the other, yet good. *Litt. ſect.* 65. And if one exchange Lands of a defeaſible Title for Lands of an undefeaſible Title, the Exchange is good till it is avoided. *Co. Litt.* 51. *a.*

The one to have exactly the ſame Eſtate in the Land as the other.

A defeaſible Title exchanged for an undefeaſible Title, is good 'till avoided.

But if Part of the Land is evicted, the whole Exchange is defeated, *Buſtard* and *Coulter*, *Cro. Eliz.* 902. *pl.* 6. 903, 917. and *Buſtard*'s Caſe, 4 *Rep.* 121. *b.* although at the Time of the Exchange the Party, with whom the Land was exchanged, knew of the Incumbrances. *Buſtard*'s Caſe, 4 *Rep.* 122. *b.*

If evicted out of Part, the whole Exchange is defeated.

A Man gives three Acres in Exchange for three other Acres, and one Acre is evicted, here all the Exchange is defeated; and he who gave the three Acres in Exchange, may enter again into his own Land. 4 *Rep.* 121.

Exchange by an Infant, if he occupy at full Age, it is perfect.

**If an Infant exchanges Lands, and after his full Age he occupies the Lands in Exchange, it becomes perfect; for that the Exchange at the firſt was not void** (b) **but voidable, it amounting to a Livery; and alſo in Reſpect of the Recompence.** Co. Litt. 51. b.

(b) But if it had been void, no Agreement of the Parties or After-act could have made it good. *Co. Litt.* 51. *b.*

Exchanges voidable, and not void.

**Exchanges of Lands made by Infants, or by Perſons** Non ſanæ Memoriæ, **a Husband of the Wife's Land,** &c. **are voidable only; by the Infant at his full Age, the Heir of the Perſon** Non ſanæ, **and the Feme after the Husband's Death.** Perk. ſect. 277.

Lands in Poſſeſſion may be given for a Reverſion.

**An Acre in Poſſeſſion may be given in Exchange for the Reverſion of another, expectant upon a Leaſe for Life or Years, where no Rent is reſerved, and it ſhall be good; for they ſo took it, and no Party was deceived.** Cro. Eliz. 902. pl. 6. Moor, Caſe 909.

# Expoſition of Words uſed in Conveyances, &c.

GRounds for the Expoſition of Words:

1. Every Expoſition ought to make the Poſition certain, ſo that no Word be left at Random.

2. *Utile*, ſo that every Part be to ſome Purpoſe.

3. *Congruum*, according to the Rules of Grammar-Conſtruction.

4. *Uſitatum*, according to former Precedents.

5. *Secundum animum diſponentis.* Litt. Rep. *66.*

6. Particular Words put after general Words ſhall qualify them. 2 Lev. 155.

7. Where Words are dubious, they ought to be taken in that Senſe, That no Tort ſhall be done. 2 Lev. 155.

## A.

*A*, 5 Co. 94. b.
*Ab*, 5 Rep. 94. b.
Abate, 8 *Rep.* 87. *a.*
Abeyance, *Hob.* 238, 335.
*Abinde*, 1 Inſt. 17. a.
*Abſque impetitione vaſti*, 2 Rep. 23. 4 Rep. 60. 6 Rep. 34. 8 Rep. 76. 9 Rep. 9. 11 Rep. 83.
Acceptance in Satisfaction, *Comb.* 199, 383.
Acceſſary, *Comb.* 17.
Accord with Satisfaction, 6 *Rep.* 44. *a.*
Accountable, *Mod. Ca. in Law and Eq.* 363.
*A confectione præſentium*, 5 Rep. 93, 94.
*Acquietatus*, Lucas 215.
Actions, 8 *Rep.* 151. *a. b.*
*Ad* and *in*, where the ſame, *Cro. Eliz.* 229.
*Ad effectum ſequen'*, Comb. 85. Mod. Ca. in Law and Eq. 102.
*Adeo plene & integre, &c.* 10 Rep. 65. a. b.
*Adhuc proſequitur*, 3 Mod. 103, 157.
Admeaſurement of Dower, 6 *Rep.* 11. *b.* 12. *a.*
*Ad quod damnum*, 10 Rep. 142. a.

*Ad ſeiſiend'*, Mod. Ca. in Law and Eq. 83.
*Ad talem effectum*, Mod. Ca. in Law and Eq. 100.
*Ad tenorem ſequen'*, Comb. 35.
*Adtunc*, vel *extunc*, vel *tunc*, Dy. 15. pl. 74, 81, 83. fo. 16. pl. 86, 91. 17. pl. 101. 347. pl. 10. 164. pl. 60. 286. pl. 43. 376. pl. 22.
*Advocatio proxima*, 1 Inſt. 378. b. 379. a. Dy. 26. pl. 165. 35. pl. 29.
Affeerors and Affeering, 8 *Rep.* 38. *b.* 39. *a.*
Agreement, *Plowd. Com.* 14. *b.* 17. *a.*
*Alibi*, 10 Rep. 65.
*Aliter vel alio modo*, 1 Ventr. 93.
All my Eſtate. *See* Eſtate.
All my Lands, Tenements and Hereditaments. *Vide* Land. *Skin.* 682.
Alſo, *Moor*, *Caſe* 153.
*Alta via Regia*, 6 Mod. 255.
Alteration, *Hob.* 255.
Amendment, 8 *Rep.* 156, *&c.*
Amercement, *Dalt. Sh.* 61. 8 *Rep.* 38. *b.* 39. *a.* 5 *Rep.* 49. *a.*
Ancient Demeſne, 6 *Rep.* 11. *b.* 12. *a.*
Ancorage, 8 *Rep.* 47. *a.*
And, 1 *Plow.* 286. *b.* 288. *b.* 289. *a.* 3 *Mod.* 235.
*Antiquum Meſſuagium*, Comb. 481.
Any, 1 *Plow.* 83.
Any Thing to the contrary in an Act of Parliament, 7 *Rep.* 19, 20.
Appeal, 9 *Rep.* 119. *a.*
Appeal from a Sentence, 6 *Rep.* 18. *b.*
Appertaining, *Vaugh.* 108, 109. *Cart.* 17, 18. 4 *Rep.* 38. *a.*
Apportionment, 5 *Rep.* 6. *a.*
*Apprentice de le Ley*, Preface to the 10 Rep.
Appropriations, 11 *Rep.* 11. *b.* *&c.* *Hob.* 307, 308.
Approver, 9 *Rep.* 119. *a.*
*Apud*, 7 Rep. 41, 42. Dy. 233. pl. 11.
Appurtenant, 4 *Rep.* 38. *a.*
*Arbitramentum*, 10 Rep. 57. b.
Archbiſhop, 11 *Rep.* 77. *a.*
*Aromatarius*, 1 Vent. 142.
Articles, 1 *Williams* 234.
Aſſarts, *Dalt. Sh.* 48.
Aſſign, *Hob.* 9, 10, 25, 27.
Aſſigns, *quid*, 5 *Rep.* 96. *b.* 97. *a.* *Plow.* 287. *b.* 288. *Comb.* 249.
Aſſize, 8 *Rep.* 45. *b.* 46, *&c.* *Comb.* 244.
At any Time, *Vaugh.* 34. 1 *Rep.* 173, 174.
Attainders, 9 *Rep.* 119. *a.*
Attornment, *quid*, 9 *Rep.* 85. *b.*
Average, 2 *Inſt.* 35.
*Averia*, Salk. 249.
Averment of Uſes, 2 *Rep.* 76. *a.*
*Aut*, 1 Inſt. 99. b. 383. a. 1 Vent. 62, 148. 6 Rep. 43, 44. a. 39. b.
*Aut alibi*, 10 Rep. 65. b. Litt. Rep. 210.

B.

Baron, *Co. Litt.* 58. *a.* *Comb.* 199, 450.
Baron-Court, 6 *Rep.* 11. *b.* 12. *a.*
*Barra*, *quid*, 8 Rep. 37. a.
Barrator, Common Barrateur, *Barratro*, 8 Rep. 36. 37. a. Mod. Ca. in Law and Eq. 230.
Baſtard, 7 *Rep.* 44. *b.* *Eigne*, 3 *Rep.* 101. *a.* *b.* 102.
Bawdy-houſe, *Comb.* 303.
Benefice, *Hob.* 157, 158, *&c.*

*Beneficium*, 2 Inſt. 29. 4 Rep. 79. a.
*Bercaria*, 2 Inſt. 476.
Biſhop, *Latch* 31, 32, *&c.* 233, 234, *&c.* 11 *Rep.* 77. *a.*
*Bona & Catalla*, 8 Rep. 33.
*Bona & Catalla Felonum*, 9 Rep. 27. a.
*Bona in exigendo poſit'*, 2 Rep. 110. b. 111. a.
*Bona fide*, *Twine*'s Caſe, 3 Rep.
*Bona fugitivorum & felonum*, 5 Rep. 109, 110. b.
*Bona waviata derelicta*, 5 Rep. 109. a.
Bottomage, *Latch* 252.
*Bovata terræ*, 9 Rep. 123. b. and Moor, Caſe 309.
Burg, 2 *Inſt.* 93.
Burglary, 11 *Rep.* 36. *a. b.*
Butlerage, *Dav. Rep.* 3. *b.*

C.

*Canfinius*, Dav. Rep. 49. a.
*Capiatur* in a Judgment, 8 *Rep.* 59. *b.* 60, *&c.* *Comb.* 352, 432, 387.
*Capitagium*, 6 Rep. 77. b.
*Capitalis plegius*, 6 Rep. 77. b.
*Caſtrum*, 4 Rep. 79. b.
*Catalla*, Cro. Car. 293. Dy. 5. pl. 3. 59. pl. 15. 124. pl. 39.
Cauſing and procuring, 6 *Mod.* 99.
*Centena*, 1 Vent. 211.
*Certum letæ, quid*, 6 Rep. 67. b.
Champertor, *Hob.* 177.
Chauntry, *Moor* 649 *to* 654.
Children, *Lucas* 376.
Citation, 6 *Rep.* 18. *b.*
*Circiter*, Noy 16.
*Civiliter mortuus*, Lucas 360.
Claim, *Vaugh.* 188, 193. 1 *Plow.* 359. *a.*
*Clauſum*, Lucas 141, 169, 170.
Clergy, 11 *Rep. from* 29 *to* 39.
Cocquet, *Davis* 113. *b.*
*Cogint*, 6 Rep. 66. a.
*Cognitio placitorum*, Lucas 126, 128.
*Cognovit actionem*, Hob. 178.
Collation, 6 *Rep.* 31. *a.*
*Collegium*, 4 Rep. 106, 108.
*Colore*, *&c.* 6 Mod. 170.
*Commenda*, Dav. 74. b. 75. b. Vaugh. from 13 to 27. Hob. 140 to 144. Latch 31 and 333.
Commenced, 5 *Rep.* 48. *a.*
Commiſſary, *Litt. Rep.* 12.
Commitment by Warrant, *Lucas* 429.
Common, called *Shack*, quid, 7 *Rep.* 5. *a. b.*
*Commote*, Vaugh. 405.
*Communia*, ibid. 255. Lucas 184, 185.
*Communis*, 6 Mod. 256.
Compoſition, *Hob.* 178, 179.
*Conceſſi*, 2 Saund. 96. 1 Sid. 452.
Conclude, 1 *Plow.* 369. *b.*
Condition, 10 *Rep.* 39. *b.* 40, 41. *a.* 1 *Plow.* 34. *a.*
*A Confectione*, 1 Inſt. 46. b.
Confederate, *Comb.* 17.
Confeſſion, *Hob.* 93.
Confirmation, 9 *Rep.* 141. *a. b.* 142. *a.*
Conjunction, *Dy.* 46. *pl.* 7. 361. *pl.* 8. 304. *pl.* 54.
*Conquerantur*, 6 Mod. 58.
Conſtable, 8 *Rep.* 41. *b.* 42. *b.*
*Conſtat*, 5 Rep. 53. b. 54. a.
*Conſuetudo*, Dav. 16. a. b. 6 Mod. 61. Comb. 472. Salk. 459.
*Continetur*, ſee in a Plea, 1 *Plow.* 143. *a.*

Contingency, 10 *Rep.* 85. *a. b.* 86.
*Continuando*, Comb. 168, 193, 377, 427, 443.
*Contra formam ſtatuti*, Comb. 160, 205, 218, 307, 336, 371, 421.
*Contra pacem*, Comb. 168.
*Contraface*, Jones T. 49, 50.
Convenient Time, *Salk.* 133.
Conveyances for Land, how to be expounded, 2 *Rep.* 42. *a.*
Copulative, 5 *Rep.* 112. *a.*
Copulative Words, 3 *Rep.* 39. 4 *Rep.* 41, 50, 79, 80. 7 *Rep.* 7, 8. 8 *Rep.* 85, 154.
Corody, 2 *Inſt.* 630.
Coroner, 3 *Rep.* 41. *b.* 42. *a.*
Coſts, 10 *Rep.* 117. *b.* 6 *Mod.* 157.
Cottage, 2 *Inſt.* 736. *Salk.* 169.
Covenant, *Dy.* 57. *pl.* 24, 25.
Coverture, 11 *Rep.* 77. *a.*
Covin, *quid*, 1 *Pl.* 54. *b.* 55. *a.* 9 *Rep.* 109.
Count, 8 *Rep.* 161. *a.*
County, *Dalton's Sh.* 1.
County-Court, 6 *Rep.* 11. b. 12. *a.*
Counter-pleading, 6 *Rep.* 9. *b.* 10. *a.*
Cranage, 8 *Rep.* 47. *a.*
*Crates*, 1 Vent. 304.
*Cum pertinentiis*, 10 Rep. 63. to 66. Williams 603. *Vide* Appertaining and *pertinens.*
*Curia viſus franc. pleg.* 6 Rep. 77. b.
Currant Money, *Dav.* 27.
Curtilage, *Litt. Rep.* 6, 7, 13.
*Cuſtumes*, Dav. 8, 9.
*Cuſtuma magna & antiqua*, Dav. 8. a. b.
*Cuſtuma parva & nova*, Dav. 8. b.

D.

Dagge, *quid*, 5 *Rep.* 71. *b.* 72. *a.*
*Damna*, 10 Rep. 116. b.
Date, or Day of Date, 1 *Inſt.* 46. *a.*
*De*, 7 Rep. 41. b. 42. a.
*De*, vel *ex*, 7 Rep. 41, 42. Salk. 474.
Dean and Chapter, 11 *Rep.* 77. *a.*
Deanery, *Latch* 34, 35.
*Debet* and *Detinet*, Comb. 47, 114, 301, 327.
*Debet & ſolet*, 6 Mod. 312.
*Decuria* or *Decenna*, 6 Rep. 77. b.
Declaration. *Vide* Count.
*Dedi*, Hob. 12.
*Dedi & conceſſi*, Vaugh. 126. 1 Inſt. 301. b. 1 Sid. 452. pl. 17.
Default, 6 *Rep.* 25. *a. b.* 9. *b.* 10. *a.* 6 *Mod.* 249.
*Demanda*, 8 *Rep.* 155. b.
Demeſne Lands, 1 *Inſt.* 17. *a.*
Demiſe, Comb. 164.
*Denarius*, Dav. Rep. 24.
Deodands, *quid*, 5 *Rep.* 110. *b.*
Depart without Convoy, *Lucas* 387.
Depending, 5 *Rep.* 48. *a.*
Depoſitions, *Mod. Ca. in Law and Eq.* 153.
*Derelicta*, 5 Rep. 109. a. Vaugh. 168.
*Dimidia pars*, 6 Mod. 231.
*Dimiſi*, Hob. 12. 1 Inſt. 301. b. Dy. 184. pl. 63. 173. pl. 37. 272. pl. 34. Lucas 140.
Direction of Precepts, *Hob.* 69.
Diſceit, 6 *Rep.* 9. *b.*
Diſcharge of Tithes, 2 *Rep.* 47. *b.*

Diſcontinuance of Eſtates, 8 *Rep.* 71. *b.* *Hob.* 335 *to* 347.
Diſcretion, *Hob.* 158, 159.
Diſjunctive, 5 *Rep.* 112. *a.*
Diſorderly Houſe, *Comb.* 303.
Diſparking, *Hob.* 45.
Diſpoſe, *Carter* 232. 1 *Mod.* 189, 190.
Diſpenſation, *Vaugh.* 333, 336, 349. *Dav.* 69.
Divorce, 7 *Rep.* 43, 44. *&c.*
*Domeſtica*, 7 Rep. 17. b.
Dower, *Plow.* 373. *a.*
*Droit, breve inde*, 6 Rep. 11. a. b. 12. a.
*Droit de Advowſon*, 6 Rep. 49.
*Duellum*, 9 Rep. 32. b.
*Dum*, 10 Rep. 41. b. Vaugh. 32.
*Dummodo*, ibid.
*Durante*, 10 Rep. 41. b.
*Durante Termino*, 1 Pl. 23. b. 10 Rep. 107. a.
*Durante minori ætate*, 5 Rep. 9, 29. Comb. 428, 475.
Dying without Iſſue, *Lucas* 403.

## E.

*Ea intentione*, Tr. 27 H. 8. 15. b.
*Eadem*, 8 Rep. 32. 10 Rep. 124. 1 Inſt. 20. b. 385. b.
Earl, 9 *Rep.* 48. *b.* 49. *a.*
*Eccleſia*, 2 Inſt. 357.
*Ejuſdem*, } 8 Rep. 32. 10 Rep.
*Eandem*, } 124.
*Ejecit*, Dy. 89. pl. 111.
Either, *Cro. El.* 797.
Election, *Litt. Rep.* 364. *Latch* 30.
Elſewhere, 3 *Leo.* 434. *Fitz-Gib.* 151, 152.
Emblements, 5 *Rep.* 116. *a.*
*Eo quod*, 1 Lev. 194.
Equally to be divided, *Cro. El.* 695. 3 *Rep.* 39. *b.*
*Erexit*, and *exaltavit*, how they differ, *Cro. El.* 59.
Error, 11 *Rep.* 38 *to* 41.
Eſcrow, 9 *Rep.* 137. *a. b.*
Eſtate, *Hob.* 276. *Style* 281. *Skin.* 194. 6 *Mod.* 107, 109, 110. 2 *Williams* 335.
Deviſe of all my Eſtate, *Mod. Caſes* 107, 108, 109, 110, *&c.*
Eſtovers, 2 *Inſt.* 17, 18. 5 *Rep.* 47. *b.*
Eſtray, 5 *Rep.* 108. *b.*
Eſtrepement, 5 *Rep.* 115. *b.*
*Et*, 3 Rep. 85. b. Salk. 640.
*Et*, taken disjunctive, 2 *Inſt.* 120. *Litt. Rep.* 210. *Anderſon*, 133, 161. *Salk.* 640.
*Et ſic*, 2 Lev. 140, 141.
Every of them, 5 *Rep.* 18.
*Ex certa ſcientia, mero motu, & ex ſpeciali gratia*, 1 Rep. 43, 44, 45, 46, 48, 49, 50, 51, 52, 53. 2 Rep. 32, 50, 54. 3 Rep. 73. 4 Rep. 35, 75. 6 Rep. 55. 8 Rep. 55. 9 Rep. 100. 10 Rep. 63, 64. 11 Rep. 11.
Except as is excepted, 1 *Saund.* 320.
Except, *Law of Entails* 336, 337, 338.
Exception, 5 *Rep.* 11. *a.* 12. *b.* 1 *Plow.* 361. *a.* 362. *b.*
Excluſive, 5 *Rep.* 1. *b.* 94. *b.*
Executory Deviſe, 3 *Rep.* 94. *b.* 95. *a. b.* *&c.* 3 *Rep.* 21. *a.*
Exemplification, 5 *Rep.* 53. *b.*
Exemption, *Vaugh.* 349.
*Exilium*, 1 Vent. 326. 2 Lev. 191, 192.
*Exitus*, Hob. 66. 1 Vent. 229. 2 Lev. 60, 61.
*Expulit*, Comb. 70.

Extortion, 10 *Rep.* 161. *b.* 6 *Mod.* 192. *Salk.* 681.

*Extunc*, vide *Adtunc*.

F.

*Faldagium*, 2 Vernt. 139.

*Falſe & malitioſe*, 6 Mod. 32. Comb. 362, 363, 116.

Farm, *quid*, 1 *Plow.* 191. *b.* 195. *a. b.* 196. *Moor*, *Caſe* 310.

*Fatuus*, 4 Rep. 127, 128.

Fealty, 6 *Rep.* 1, 2, 6, 7.

*Fecit notam*, Mod. Ca. in Law and Eq. 307.

*Felo de ſe*, 5 Rep. 110. b.

*Felonice*, Salk. 681.

*Felonica interfectio*, Comb. 39, 407.

Feudal Barony, Salk. 252.

Fine in a Leet, 8 *Rep.* 38. *b.* 39. *a.*

Fine upon a Verdict, with a *Capiatur*, 8 *Rep.* 59. *b.* 60.

*Finis Ipſe jure ſit nullus*, 3 Rep. 88, 89.

*Firmam facere*, Cro. Car. 202.

Flotſam, 5 *Rep.* 106. *a.* *Dalt. Sher.* 90.

Forfeit, 2 *Plow.* 484. *b.* 485. *a. b.* 486.

*Forma præd'*, 2 Ventr. 215.

Franchiſe, 8 *Rep.* 125. *a.*

From henceforth, 5 *Rep.* 1.

From the Date, or from the Day of the Date, 5 *Rep.* 1.

Fines, *Plow.* 368. *b.* 369. *a.*

*Furlinga*, *Hida*, *&c.* Salk. 254.

G.

*Gamlettum*, 2 Inſt. 402.

*Garba*, Aleyn 80.

Garniſhment, *Dalt. Sher.* 478.

*Generale*, 4 Rep. 76. a.

Goods, 1 *Williams* 207.

Grain, *Aleyn* 80.

*Grande Cape*, 6 Rep. 9. b.

Grant, *Comb.* 195. *Salk.* 225.

Guardian, *Comb.* 330, 331.

*Gubernatio & Regimen*, 1 Ventr. 324.

*Guidagium*, 2 Inſt. 526.

*Guildan*, *quid*, 8 Rep. 125. a.

Guildable, *Dalt. Sher.* 185. 8 *Rep.* 125. *a.*

*Gurges*, Vaugh. 108.

H.

*Habendum*, 2 Rep. 55. a. b. 5 Rep. 7. b. 9 Rep. 47. b. 48. a. 10 Rep. 107. b. 1 Plow. 196. b. 197, 151. a. *&c.* Comb. 330, 339.

*Habit'*, 6 Rep. 66. a.

Hand-Gun, 5 *Rep.* 71. *b.* 72. *a.*

Haye is a Wood incloſed, *Palmer* 60.

Heath, 2 *Inſt.* 656.

*Herbagium*, 8 Rep. 55. a. Mo. N° 139.

Heir, *Raym.* 334, 335. 8 *Rep.* 54. *a.* *Skin.* 559.

Heirs, 2 *Lev.* 60. *Raym.* 234, 316, 317. *Lucas* 371. *Fitz-Gib.* 116, 117.

Heirs of the Body of the Huſband and Wife, and their Heirs, 2 *Williams* 342.

Hereditament, 1 *Rep.* 121. *a.* 3 *Rep.* 2, 4, 8. 7 *Rep.* 33, 34. 1 *Inſt.* 6. *a.* 16. *a.* 383. *a. b.* *Dy.* 323. *pl.* 30. 250. *pl.* 20, 21. *Salk.* 349. *Lucas* 236.

Homage, 6 *Rep.* 1, 2.

*Homo* vel *Homines*, 6 Rep. 52.

*Hors de ſon Fee*, 9 Rep. 20. a. b.

Hoſpital, 1 *Williams*, 426.

Hotchpt, *Salk.* 426.

Hundred-Court, 6 *Rep.* 12. *a.*

*Huteſium*, 2 Inſt. 173.

Hypothecation, *Modern Caſes* 13. *Salk.* 34, 35.

I.

*Ibidem*, 4 Rep. 41. Dy. 164. pl. 60.

*Idem*, 10 Rep. 124. a. b. 125. a. 8 Rep. 32.

*Idonea Perſona*, 6 Rep. 49. b. 50. a.

*Idoneus Homo*, 8 Rep. 41. a. 42. a.

Ideot, 3 *Rep.* 171. *a.* 11 *Rep.* 11. *a. Hob.* 155. 4 *Rep.* 124. *b.*

Jetſam, 5 *Rep.* 209. *a. Dalt. Sher.* 90.

Jeofails, *Blackmore's* Caſe, 8 *Rep.* 156. *a. &c.*

If, *Wynch* 105, 106, 115.

*Illa*, 2 Rep. 33. a.

Imbezil, *Lucas* 150.

Impeachment of Waſte, *vide* Waſte, 3 *Rep.* 62, 63. *a.*

*Imperpetuum*, Litt. Rep. 3.

*Impetitio*, *quid*, 11 Rep. 32. b.

Imported, *Vaugh.* 171, 172.

Impoſition, 2 *Inſt.* 60, 584.

Incloſure, *Litt. Rep.* 266.

Incluſive, 5 *Rep.* 1. *b.*

*Inde*, 6 Mod. 262.

*Inde producit ſectam*, Lucas 253.

*Indorſavit*, Salk. 375, 376.

Induction, *quid*, 4 *Rep.* 79. *a.*

Infant, 11 *Rep.* 77. *a.*

Infangthief, 2 *Inſt.* 31.

Ingroſſer, 2 *Inſt.* 8.

Inherit, *Lucas* 122.

*Injuria*, Litt. Rep. 11.

*Innoteſcimus*, 5 Rep. 53. b.

*Inſpeximus*, 5 Rep. 53. b.

Inſtitution, *quid*, 4 *Rep.* 79. *a.*

Intereſt, 2 *Plow.* 488. *a.*

*Innuendo*, 4 Rep. 13, 17, 20. Comb. 72, 460, 461. Salk. 513.

Journeys Accounts, 6 *Rep.* 9. *b.* 10. *a.*

*Ipſo facto*, Dy. 275. pl. 48. 237. pl. 29. 297. pl. 25. Lucas 65, 79.

Iſſue, *Vide Exitus.* Skin. 559. Lucas 403, 183, 184, 376.

Iſſue Male, *Lucas* 314.

Iſſues, 2 *Lev.* 60.

Iſſuing, 7 *Rep.* 41. *b.*

*Ita quod*, Trin. 21 H. 8. 15. b.

*Item*, Salk. 239.

*Judicium*, 9 Rep. 13. a.

*Jure Patronatus*, 6 Rep. 49. Hob. 201, 292, 317, 318.

*Juris Utrum*, Hob. 153.

*Jus*, the ſeveral Sorts, 8 *Rep.* 151. *b.* 152. *Plow.* 437. *b. Hob.* 335, 336.

*Jus accreſcendi*, 6 Rep. 79. a.

*Juſticies*, 6 Rep. 12. a.

*Juxta*, 6 Rep. 73. 10 Rep. 132. Dy. 142. pl. 52.

*Juxta tenorem*, Salk. 324, 417, 660.

K.

Kneave of Land, 6 Mod. 140.

L.

*Lagan* vel *Ligan*, 5 Rep. 106. b. Dalton's Sh. 90.

Land, what paſſes thereby, *Cro. Eliz.* 47. *b.* 1 *Vent.* 260. Lucas 525, 526, 528.

*Lapſus*, Plow. Com. 541. b. Hob. 154.
Late, 2 *Rep.* 47.
*Latin*, 10 Rep. 133. a. b.
Lawfully enjoy, *Vaugh.* 124.
Leet, 6 *Rep.* 77. *b.* 78. *a.* 8 *Rep.* 38 *to* 42. 11 *Rep.* 42.
Legacy, *Aleyn* 39.
Letherwite, 2 *Inſt.* 489.
*Libellus famoſus*, 5 Rep. 825. a.
*Libera piſcaria*, Comb. 11, 433, 464.
*Liberum tenementum*, 6 Mod. 117, 118.
*Licet*, 1 Plow. 121. a. b. &c. Cro. Eliz. 75. Dy. 112. pl. 53. 113. pl. 50, 59. 297. pl. 25.
Limitation, 10 *Rep.* 39. *b.* 40, 41.
Livelihood, *Lucas* 526.
Livery, 5 *Rep.* 84. *b.* 5 *Rep.* 26. *a. b.*
Lot and Scot, 7 *Rep.* 17.
Lunatick, *Hob.* 155, 215. 4 *Rep. Beverley*'s Caſe, 124. *b.* 125, *&c.*

M.

*Malitioſe*, Comb. 116.
*Malitia*, Lucas 215.
*Malitia præcogitata*, 6 Mod. 33.
*Malum in ſe*, Vaugh. 332, 333, 334, 358, 359.
*Malum prohibitum*, Ibid.
Manor, 4 *Rep.* 79. *b. Latch* 63. Lucas 525.
*Manſueta*, 7 Rep. 17. b.
Maſter of College, 11 *Rep.* 77. *a.*
May, *Comb.* 220. *Salk.* 609.
*Medietas*, 6 Mod. 231.
Merger, 2 *Rep.* 61. *a.* 8 *Rep.* 75. *a.* 11 *Rep.* 80. *a.*
*Miſericordia*, 8 Rep. 59. a. Comb. 352, 432, 387.
*Miſericordia* in a Judgment, 5 *Rep.* 49. *a.*
*Modo & forma*, Co. Litt. 281. b. Comb. 38, 212.
*Molliter manus impoſuit*, Comb. 17, 227.
*Monomachia*, *quid*, 9 Rep. 32. b.
Month, *Yelv.* 100.
Monopoly, *quid*, 11 *Rep.* 86. *b.* *&c.*
More or leſs, *Vaugh.* 35.
*Mulier*, 7 Rep. 44. a.
*Mulier puiſne*, 8 Rep. 101, 102.
Murage, *Dav.* 13. *b.*
*Murdrum*, 1 Plow. 261. a. Comb. 39, 407.
*Mutuo*, 2 Saund. 291.
*Mutuaſſet*, 1 Vent. 109.

N.

*Namium*, 2 Inſt. 140, 141.
*Natura*, *quid*, Vaugh. 121, 224.
*Natura*, *vis maxima*, Sherrington's *Caſe in* Plow.
Naturalization, *Vaugh.* 280.
*Necnon*, 8 Rep. 154. b. Lucas 185.
*Ne diſturba pas*, Hob. 162, 163.
Nihilling, *Dalton Sher.* 478.
*Nolle proſequi*, 8 Rep. 58. a. Comb. 18, 23, 38, 39, 326.
*Non Compos*, 4 Rep. 123. b. *ad finem*, 11 Rep. 77. a.
*Non eſt factum*, 11 Rep. 26. b. 27, 28. Comb. 38, 452, 468.

*Non eſt hæres viventis*, Comb. 153, 155.
*Non obſtante*, 4 Rep. 35. b. Hob. 230, 231. Comb. 21, 22.
*Nomen*, 8 Rep. 65. a. 11 Rep. 20. b.
*Nomine pœnæ quo quolibet die poſt feſtum prædict'*, Palmer 210.
Not incloſed, and though not incloſed, *Lucas* 280.
*Notitia*, 6 Rep. 29. b.
Now, 1 *Williams* 597.
Now Living, *Skin.* 194.
*Null*, Lucas 179, 245.
Number 3 *Mod.* 63.
*Nuncupat*, 6 Rep. 66. a.
*N'unque accouple*, Comb. 72, 131, 473.
*Nuper*, 1 Plow. 190. b. 2 Rep. 47. 2 Bulſt. 258.

### O.

*Obſtupabat*, 1 Vent. 4.
Occupancy, *Comb.* 290.
Occupation, *Plow. Com.* 541. *b.* 542, 543.
*Odio & atia, quid*, 9 Rep. 56. a. b.
Officer, 4 *Rep.* 76. *b.*
Oppreſſion, 9 *Rep.* 101. *b.*
Or, *vide Aut*, when a Diſjunctive, when a Copulative, *Fitz-Gib.* 214 *to* 224. 1 *Williams* 434.
Or more, *Vaugh.* 35.
Or by any other Means, 2 *Rep.* 46. *b.*
Ordeal, 9 *Rep.* 33. *a. b.*
*Ore tenus*, Skin. 391.
Other than, *Law of Entry* 337.

### P.

Pair of Vallance, 1 *Ventr.* 71, 106.
Panel, 8 *Rep.* 162. *a.*
*Panagium*, 8 Rep. 47. a. 55. a. Moor 46. Moor, Caſe 139.
*Paraphernalia*, Moor, Caſe 354.
Paravail, *quid*, 9 *Rep.* 85. *a.*
Park, *Hob.* 44, 45.
*Parliamentum*, 10 Rep. 57. b.
*Parochia, quid*, 5 Rep. 67. a.
Parol Demurrer, 6 *Rep.* 1, 2. 8 *Rep.* 50. *a.*
Parols copulative, *&c.* 3 *Rep.* 39. 4 *Rep.* 41, 50, 79, 80. 7 *Rep.* 7, 8, 9. 8 *Rep.* 85, 154. 10 *Rep.* 110, 112.
Parols disjunctive, 5 *Rep.* 2, 22, 40, 112. 6 *Rep.* 39, 127, 129.
Parſon, 11 *Rep.* 77. *a.*
*Particeps criminis*, Salk. 22.
*Paſſagio*, 8 Rep. 47. b.
*Paſtura*, Palmer 174, 175.
Paying, 10 *Rep.* 41. *a.*
Payment, 5 *Rep.* 117. *a.*
Peaceably and quietly, *Vaugh.* 121.
Peculiars, *Salk.* 41.
Pedage, 8 *Rep.* 47. *a.* 55. *a.* *Moor* 46. *Palmer* 77.
*Penſio*, vel *penſionem*, 5 Rep. 40, 41.
*Per quod*, Comb. 481. Mod. Ca. in Law and Eq. 372.
*Per nomen*, 1 Plow. 104. a. b. &c. 150. b. Vaugh. 174, 175.
*Per* and *Poſt*, Co. Litt. 238. b. 239. a. 12 Co. 55, 56.
*Per* and *in* the ſame, *Cro. Eliz.* 193.
Pernor, *Dalton's Sher.* 151.

*Perſona imperſonata*, 7 Rep. 26. a.
*Pertin'*, *vide* Appertaining.
*Pertinens*, 4 Rep. 38. Litt. Rep. 6, 7, 8, 9.
Piccage, 8 *Rep.* 47. *a.* 55. *a.* *Moor* 46. *Palmer* 77.
*Piſcaria*, 2 Roll. Abr. 2. Co. Litt. 4. b.
*Placitum*, 1 Saund. 328. Skin. 550, 554.
Plenarty, 6 *Rep.* 31. *a.* 49. *b.*
*Plenius veritat*, Mod. Ca. in Law and Eq. 83.
Politick Body, 2 *Plow.* 458. *a.*
*Portio decimarum*, *quid*, 4 Rep. 35. a.
*Poſſeſſio*, 1 Jones 102.
Poſſibility, 10 *Rep.* 47. *b.* *Lampert*'s Caſe, 48. *a.* 5 *Rep.* 2. *a.* *Elmar*'s Caſe.
Poſtulation, *Latch* 35.
Pontage, 8 *Rep.* 46. *b.*
Poor Relations, 1 *Williams* 327.
Poundage, *Dav. Rep.* 12. *b.*
Power, 6 *Rep.* 33. *a.*
Prebendary, 11 *Rep.* 77. *a.*
*Præconeſſa*, 11 Rep. 51. a.
*Prædict'*, 10 Rep. Whiſtler's *Caſe*, 11 Rep. 50, 51. 1 Rep. 153. 8 Rep. 57, 74, 75, 91. 9 Rep. 47, 48. 10 Rep. 64, 67, 69, 106, 138. Comb. 461.
*Prædictus*, Hob. 6. 1 Inſt. 20. b. Dy. 15. pl. 81. 36. pl. 34. 87. pl. 102.
*Prædimiſſa*, 11 Rep. 51. a.
*Præfectus*, Lucas 178.
*Præmiſſa*, ibid.
Premiſſes, *Hob.* 276. *Plow.* 196. *b.* 151. *a.* *Skin.* 532, 533.
*Prætextu quorum*, Dy. 86. pl. 92, 93. 6 Mod. 170.

*Primarius fidejuſſor*, *quid*, 6 Rep. 77. b.
Priſage, 3 *Bulſt.* 21. *Dav.* 8. *b.* *Salk.* 617.
Privities, how many ſeveral Sorts, 3 *Rep.* 43. *b.* 75, 76.
Privies in Caſe of a Fine, *Plow.* 463. *a. b.* *Hob.* 333.
*Pro*, Hob. 41, 42. 1 Saund. 320. 2 Saund. 352. 10 Rep. 42. a. 4 Rep. 88. 2 Lev. 23.
*Pro conſideratione*, Mod. Ca. in Law and Eq. 42, 106.
*Procuravit*, 6 Mod. 32.
*Pro Rata*, Hob. 88.
*Proceſſus*, 8 Rep. 157. b.
*Prochein amy*, 1 Inſt. 88. a. Comb. 330, 331.
Profits out of Land, and Profits of Land, *Lucas* 94, 96, 121, 241, 401.
Proof, *Hob.* 92, 93, 217, 219.
Property, *Lucas* 143.
*Proteſtando*, Plow. 376. b.
Proviſo, *Dy.* 222. *pl.* 21. *Cro. Car.* 128, 129. *Moor*, Caſe 152, 249, 308. *Carter* 3. 2 *Co.* 70. *b.* 71. *a.* 72. *Poph.* 116. *Tr.* 27 *H.* 8. 15. *b.* 17. *a.*
*Prout patet per recordum*, Comb. 299.
Proxy, *Dav.* 1. *b.*
*Proximo de ſanguine*, Palmer 304.
*Publicus*, 6 Mod. 256.
*Puer*, Hob. 82. Dy. 337. pl. 36.
Purchaſe, *Hob.* 65. *Lucas* 92, 95, 121, 124, 125, 234, 238, 242, 526.
Purloin, *Lucas* 150.
Purpreſture, *Dalt. Sher.* 4, 35. 2 *Inſt.* 32, 272, 278.

Q.

*Qualis talis*, 4 Rep. 18. 6 Rep. 33. 10 Rep. 104. 11 Rep. 33.

*Quando*, Tr. 27 H. 8. 15. b.

*Quamdiu*, Vaugh. 32. 10 Rep. 41. b.

*Quare cum*, Comb. 4, 213, 325. Salk. 636.

*Quare impedit*, 6 Rep. 48. b. to 51.

*Que Eſtate*, 10 Rep. 59. b.

*Que* vel *quas*, 8 Rep. 148, 144, 155.

*Querelas*, 8 Rep. 153. a. b.

*Quia*, Dy. 138. pl. 31. 1 Lev. 194.

*Quidam*, Litt. Rep. 17.

*Quid juris clamat*, 1 Plow. 209. b.

*Quilibet* vel *quemlibet*, 5 Rep. 10, 113. Dy. 154. pl. 15. 230. pl. 80.

*Quod cum*, 1 Plow. 128. a. Comb. 4, 213, 325. Salk. 636.

*Quod permittat*, 9 Rep. 53. b. 5 Rep. 100. b. 101.

*Quondam*, 1 Plow. 190. b. 2 Rep. 47. 10 Rep. 59, 62.

*Quo jure*, Hob. 318.

*Quouſque*, 10 Rep. 41. b. Dy. 307. pl. 67.

*Quo Warranto*, 9 Rep. 23 to 32.

R.

*Ratione cujus*, not traverſable, 11 *Rep.* 11. *a.*

*Ratione inde*, not traverſable, 2 *Rep.* 48.

Record, 8 *Rep.* 161. *a.*

Reaſonable, 1 *Rep.* 176, 177.

Rectory, *quid*, 4 Rep. 69. a.

Redemption, *Modern Caſes* 13.

Relation, 3 *Lev.* 239.

*Relaxare*, 10 Rep. 52. b.

Relief, *Latch* 131.

Remainder, *Vaugh.* 269, 279. *Mod. Caſes* 112. *Lucas* 94.

Remitter, *Hob.* 257.

*Repoſitorium*, Cro. Car. 555.

*Reputat'*, 6 Rep. 66. a.

Reputation, *Vaugh.* 109. *Dy.* 362. *pl.* 17.

Reſervation, *Tr.* 27 *H.* 8. 18. *b.* 19. *a.*

Reſervation of Rents, 10 *Rep.* 107. *b.*

Reſidue in a Will, *Mod. Caſes* 108.

Reſt in a Will, *Mod. Caſes* 111.

*Rette*, 2 Inſt. 150, 256.

*Retraxit*, 8 Rep. 58. a.

Reverſion, 1 *Plow.* 196, 197, *from* 151 *to* 153. *b. &c.* 158.

Revocation, *Lucas* 520.

Revocation of Uſes, 6 *Rep.* 32. *b.* 33. *a. b.* 10 *Rep.* 86. *a.*

Right, *vide Jus.*

Rights, *Hob.* 242, 335, 336.

S.

St. *Michael's* Feaſt, *Hob.* 32, 65.

Salvage, *Salk.* 254.

Satisfaction, 5 *Rep.* 117. *a. b.*

Saving, 6 *Rep.* 6. *a.* 76. *b.* *Plow.* 361. *a. Law of Entry* 337, 338. 2 *Rep.* 73. *b.* 74. *a.* 5 *Rep.* 124. *a. Raym.* 359.

*Scilicet*, (*vide Viz.*) Hob. 171. 172, 284. Hardreſs 4. Dy. 77. pl. 38. 150. pl. 20. 1 Saund. 286. 2 Saund. 290.

Scot and Lott, 7 *Rep.* 17. 3 *Bulſt.* 16.
*Separatim*, 5 Rep. 23. a.
*Sequenda*, 1 Vent. 74. 2 Saund. 95.
*Semine*, *ſanguine*, 1 Rep. 103. 3 *Rep.* 40, 61.
Seiſin, *quid*, 6 *Rep.* 57. *b.* *Lucas* 125, 229, 301.
Serjeant at Law, *Preface to the 10th Report.*
Services, 6 *Rep.* 1, 2.
Sewers, 10 *Rep.* 131 *to* 142.
Shack, *quid*, 7 *Rep.* 5. *a. b.* Sir *Miles Corbet*'s Caſe.
Shall be, 6 *Rep.* 33. *b.*
Sherive, *Dalton's Sher.* 4, 35.
Shire, *ibid.* 1, 35.
*Si*, Trin. 27 H. 8. 16. a.
*Sibi*, Dy. 15. pl. 82.
*Simul cum* in Grants, 8 H. 7. 4. a. 13 H. 7. 19. b.
*Si contingat*, Trin. 27 H. 8. 15. *b.*
*Si modo*, Cro. Car. 475, 476.
Simony, *Comb.* 134, 205, 394.
*Soca*, 1 Inſt. 230.
So, 2 *Lev.* 140, 141.
*Solebat*, Modern Caſes 313.
*Solvendo*, Cro. Car. 289.
*Speciale*, *quid*, 4 Rep. 76. b.
*Spectan' & pertinen'*, 6 Rep. 32. b.
Spittal, 1 *Williams* 426.
Spoliation, *Vaugh.* 24.
*Stagnum*, Vaugh. 108.
Stallage, 8 *Rep.* 47. *a.* *Palmer* 77.
Statute, *Skin.* 370.
*Statum*, 6 Mod. 109.
Sterling, *Dav.* 22. *b.* 23. *a.* 24. *b.*
Steward, 9 *Rep.* 48. *b.*
Stock and Family, *Hob.* 33.
*Strata*, Lucas 382.
Stray. *Vide* Eſtray.
*Stulte agit*, Mod. Ca. in Law and Eq. 152.
*Sub conditione*, 10 Rep. 42. a. Tr. 27 H. 8. 15. b.
Subornation, *Modern Caſes*, 202, 203.
Subſidy, *Dav.* 9. 10. *b.*
Suceſſive, *Hob.* 313, 314, 315. *Dy.* 361. *pl.* 8. *Lucas* 382.
Such, 6 *Rep.* 33. *b.* *Comb.* 353.
Summons and Severance, 6 *Rep.* 25. *a.*

## T.

Tail after Poſſibility, *quid*, 11 *Rep.* 80. *b.*
*Tales*, 10 Rep. 102. b. to 105. b. Cro. El. 30.
*Talis* for *idem*, Cro. Eliz. 197, 240.
*Talis qualis*, 4 Rep. 18. 6 Rep. 30. 10 Rep. 104. 11 Rep. 33.
*Tallagium*, 2 Inſt. 533.
Taniſtry, *Dav.* 28. *b.*
*Tempus ſemeſtre*, *quid*, 6 Rep. 50, 62.
Tenement, *Moor*, Caſe 82. *Bro. Grants*, 10. *Mod. Caſes* 82. *Mod. Ca. in Law and Eq.* 355.
Tender of Money upon a Condition, 5 *Rep.* 114, 115, 117.
*Tenendum*, 6 Rep. 5. b. 6. a. 7. a.
*Tenere placita*, Lucas 126.
*Tenentes*, Lucas 185.
Tenor, *Raym.* 212. *Salk.* 324, 417, 660.
Tenures, 6 *Rep.* 1, 2, 5, 6. *b.*
*Terminus*, 1 Plow. 273. a. b.
*Terminus annorum*, 1 Rep. 153, 154.

*Teſtamentum*, 10 Rep. 57. b. 1 Plow. 343. b.

*Terra, quid*, 4 Rep. 37. b. Lucas 170, 185, 186.

*Terra*, taken in the proper Signification in Writs, but not in Deeds or Wills, *Cro. El.* 476.

*Terræ Dominicales*, 1 Rep. 46. 4 Rep. 21. 5 Rep. 6.

*Thavies-Inn*, ſee the Preface to the 10th Report.

Then and thenceforth, *Lucas* 31, 73.

Then and when, 3 *Rep.* 21. *a. b.* 2 *Plow.* 485. *a.*

Thence, 2 *Lev.* 241, 242.

*Theolonium*, Dav. 16.

Tho', *Lucas* 280.

Timber, *Yelv.* 152. *Palm.* 504.

Tithingman, 6 *Rep.* 77. *b.*

*Tithingum*, 2 Inſt. 99.

*Titulum*, 8 Rep. 153. b. 1 Plow. 83. a. b.

To *J. S.* and his Heirs, *Lucas* 371.

To ſuch Daughters as ſhall be begotten, *Lucas* 397, 398.

To be born, 1 *Williams* 426.

Together with, 8 *H.* 7. 4. *a.* 13 *H.* 7. 19. *b.*

*Tolnetum*, 2 Inſt. 58, 530.

Toll-Aſſize, Giſt for it, 8 *Rep.* 46. *b.*

*Tonſura*, Palmer 174, 175.

Totting, *Dalton's Sher.* 478.

*Totum ſtatum*, Jones T. 70.

*Tronagium*, *quid*, 8 Rep. 46. b.

*Tranſgreſſio*, Hob. 203.

Treaſure-Trove, 5 *Rep.* 108. *b.*

Trials of all Sorts, 9 *Rep. from* 30. *b. to* 33. *a.*

*Tunc*, vide *adtunc*, Tr. 27 H. 8. 15. b. Dy. 14. b.

## V.

*Vaccaria*, 2 Inſt. 476.

*Vadium*, Salk. 552.

Value, *Hob.* 65.

*Veredictum*, 9 Rep. 13. a.

Veior, *Dalt. Sher.* 151.

*Vel*, 5 Mod. 137.

*Verus & antiquus redditus, quid*, 5 Rep. 4. b. 5. b.

*Veſtura*, Palm. 174, 175.

*Veſtura terræ*, 1 Ventr. 393. 2 Roll. Abr. 2.

*Via Regia*, 6 Mod. 255.

Vicar, 11 *Rep.* 77. *a.*

*Videmus*, 5 Rep. 53. b.

*Videlicet*, Moor, *Caſe* 236, 349. *vide* Scilicet, *and* Cro. Eliz. 422, 702. 1 Saund. 118, 169. Salk. 681.

*Viz.* largely expounded, *Hob.* 171, 172, 284. *Moor* 880, 881. 5 *Rep.* 55, 112. *Palm.* 508.

*Villa*, Salk. 501.

*Virgata terræ*, Plow. Com. 168. *b.*

Unable to work, *Lucas* 308.

*Una cum*, 6 Rep. 39. b. Hob. 174, 175. Vaugh. 241. Moor 882. Mod. Ca. 109.

Uncle, *Vaugh.* 241.

Under the Hand and Seal of *A.* and under the proper Hand and Seal of *A. Lucas* 291.

Unnatural, *Vaugh.* 221, 222, 224.

*Volo*, 1 Inſt. 301.

*Uſque*, Cro. Eliz. 422, 702. 5 Roll. 94. b.

*Uſque* vel *quouſque*, 3 Rep. 19, 20. 4 Rep. 82. 5 Rep. 94. b. 10 Rep. 41.

Uſually letten, *Vaugh.* 33, 34.

*Uſura, quid*, 5 Rep. 70. a.

Uſurpation, 6 *Rep.* 29. *b.* 30. *a.* 49, *&c.*

*Vivarium*, 2 Inſt. 100, 162, 199, 200, 571.

*Volentibus*, 6 Mod. 188.

*Ut*, 6 Rep. 66. b. 1 Inſt. 17. b. 43. b. 1 Vent. 73, 74, 62, 148. Dy. 138. pl. 31. 132. pl. 79.

*Utas*, 2 Inſt. 157.

Utenſils, *Dy.* 59. *pl.* 16.

*Uterque*, Dy. 338. pl. 39. 310. pl. 80. Anderſon 55, 56. 5 Rep. 103.

*Uterque & utrumque*, 5 Rep. 10, 113.

*Utrique*, Cro. Eliz. 885.

W.

Waifs, 5 *Rep.* 109. *a.*

*Wapentagium*, 2 Inſt. 99.

Warrant of Attorney, 162. *a.*

Waſte, 11 *Rep.* 80. *a. b. &c.* 82. *b.*

Waſte *ſans* Impeachment, 1 *Inſt.* 220. *a. Dy.* 47. *pl.* 11. 222. *pl.* 20.

Wharfage, 8 *Rep.* 47. *a.*

When, 3 *Rep.* 21. *a. b. Lucas* 314.

When and then, 3 *Rep.* 20, 21.

Will, *Hob.* 249.

Words, *quid*, *Plow.* 82. *a.*

Wreck, *Vaugh.* 168. 5 *Rep.* 106. *a.*

Writing, *Hob.* 312, 313.

Y.

Yeoman, *Dy.* 46. *pl.* 2, 3.

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# Rules for Expoſition of Deeds, *&c.*

Deeds are to be conſtrued according to the Meaning of the Makers.

**L**Earning is honeſt, and wiſh'd ſo to be uſed, that every Man learned in the Laws, do conſtrue Deeds according to the Meaning of the Makers. 1 Leon. Caſe 279. Fol. 197.

The Owner of Lands may diſpoſe of them as he pleaſes, according to Law.

Every Owner of Land may diſpoſe of the ſame as he pleaſes, by giving the ſame to what Perſons, and in what Manner, and at what Time he pleaſes, ſo that it be conſonant to Law, and not repugnant. Plow. Com. 341 b. per Mountague, Chief Juſtice.

What are the Things to be reſpected in Conveyances.

In Conveyances, we are to reſpect two Things, the Form, and Effect of them; and in all Caſes where the Form and Effect cannot ſtand together, the Form ſhall be rejected, and the Effect ſhall ſtand. Per Harper, Juſtice, Brent's Caſe, 2 Leon. Caſe 25. Fol. 17.

The Words of an Indenture are the Words of both Parties.

The Words of an Indenture are the Words of both Parties. Cro. Jac. 398. pl. 4. Lucas 47, 48. And they are eſtopped to deny eſſential but not deſcriptive Words. Mod. Caſes in Law and Eq. 311. And altho' they are ſpoken as the Words of one Party, yet they are not his Words only, for he hath the Conſent of the other Party to every one of theſe Words. Plo. Com. 134.

Not ſo in Deeds Poll.

Where Words are written in an Indenture, they ſhall be taken as the Intent of both Parties may be intended, and not as the Words in Deeds Poll * ſhall be, for they ſhall be taken moſt ſtrong againſt the Grantor. 1 Plow. 134. a. 2 Roll. Abr. 65. Co. Litt. 146. Lucas 47. Hob. 229. Where the Conveyance will not take Effect the Way it was intended, there rather than it ſhould have no Effect, it ſhall paſs by another Way than what the Parties deſigned. Lucas 35. Vide where the Grantor's Name was omitted in the Body of a Tripartite Deed, and ſupplied by the Intention, Lucas 45, &c.

* For there they are only the Words of the Grantor.

The four Grounds for the Expoſition of Deeds.

**There are four Grounds for the Expoſition of Deeds.**

1. **That they may be moſt beneficial to the Taker,** (a) Plow. Com. 160. b. Carter 105. Poph. 138. **And if the Words have a double Signification, then that which is moſt to the Diſadvantage of the Speaker, and moſt for the Advantage of the other, ſhall be preferred.** Plow. Com. 287. b.

(a) Alſo, that all Parts ought to ſtand, if they may by any Conſtruction ſtand with the Rules of Law. *Litt. Rep.* 344, 345. 2 *Rep.* 23. *b. Fitz-Gib.* 214 to 2 4.

**They muſt have a reaſonable Expoſition, and muſt be without Injury to the Grantor, and with the greateſt Advantage to the Grantee.** Plow. Com. 161. a. per Staundford **Juſtice.**

**A Man ſhall not by his own Act fruſtrate or defeat his own Grant.** Hob. 41. **or ſubvert, or derogate from his own Act.** 5 Rep. 24. b. 25. a.

2. **They ſhall never be void, where the Words may be imployed to ſome Intent.** Plow. 160. b. per Staundford **Juſtice.** Lucas 46.

3. **The Words ſhall be conſtrued according to the Intent of the Parties, and not otherwiſe.** (b) Plow. Com. 160. b. 2 Roll. Abr. 65. Co. Litt. 146. Lucas 47, 48. **ſo that all Parts may be effectual.** Poph. 138. Carter 98, 167. Litt. Rep. 344, 345.

(b) The Intention of the Parties is obſervable in all Acts, and eſpecially in the Diſpoſition of Eſtates. *Raym.* 414.

4. **They ought to be conſonant to the Rules of Law.** Litt. Rep. 344.

**The Law ſhall never make any Conſtruction againſt the Purport of a Deed, to the Prejudice of any, or againſt the Meaning of the Parties.** Co. Litt. 313. a.

Where the Words ſhall be tranſpoſed and marſhalled.

**The Words ſhall be tranſpoſed and marſhalled.** (c) **So that where the Grant is impoſſible to take Effect according to the Letter, the Law ſhall make ſuch Conſtruction, as the Gift by Poſſibility may take Effect.** Benignæ ſunt interpretationes Chartarum propter ſimplicitatem Laicorum, ut res, &c. *Co. Litt.* 183. *b. Lucas* 46.

The Law will tranſpoſe Words and Clauſes.

(c) The Law will tranſpoſe Words and Clauſes to come at the true Meaning of them, but not confound them. *Carter* 150. *Co. Litt.* 217. *b.*

How every Clauſe in a Deed ſhall be taken.

**The Clauſes in every Deed ought to be taken according to the ſubject Matter.** Carter 105.

How to judge upon Acts, Deeds and Bargains.

**The Wiſdom and Benignity of the Law being to judge of an Act, Deed, or Bargain, conſiſting of di-**

I diverſe

verſe Parts, containing the Will and Intent of the Parties, all tending to one End, doth judge of the Whole, and gives every Part its Office, to make up that Intent, and doth not break the Words in Pieces. Hob. 275.

Where the Words of a Deed have a double Conſtruction, how to be expounded.

Whenſoever the Words of a Deed, or of the Parties without Deed, may have a double Conſtruction, and the one ſtandeth with Law and Right, and the other is wrongful, and againſt Law, the Intendment which ſtandeth with Law ſhall be taken. (a) Co. Litt. 42. a. b.

The Words Give and Grant.

'Tho' a Deed may be void as to ſome Perſons, yet it is ever good againſt the Party who made it. *Hob.* 166.

The Words ſhall not be uſed to a double Conſtruction.

Whereſoever you once uſe the Words of a Deed for your Purpoſe, you ſhall not uſe it for another Conſtruction. Litt. Rep. 280, 281.

Inſenſible Words ought to be rejected.

In Grants, Words which are inſenſible ought to be rejected; ſo likewiſe Words of a known Signification, when they are ſo placed in the Deed, as they are repugnant. Vaugh. 176.

They ſhall be conſtrued to an eaſy and not ſtrained Senſe.

The Words of a Grant ſhall be conſtrued to a reaſonable and eaſy Senſe, and not ſtrained to Things unlikely and unuſual. (b) Hob. 304.

No nice and ſtrained Conſtructions.

Grants ſhall never be void, if not againſt Law.

The Law ſhall never adjudge a Grant to be void, if by any Conſtruction it may ſtand with the Rules of Law. 2 Rep. 23. b. Lucas 46.

Deeds are to be expounded, that all Parts may ſtand together.

It is a good Rule, ſo to expound the Deed, that all the Parts ſhall ſtand together. Ut res magis Valeat, &c. Hob. 168.

Where to make a Condition, and where a Covenant.

In a Common Law Aſſurance, Judges ſhall break the Deed in Pieces, to fulfil the Intents of the Parties; as Deeds ſhall be expounded ſo as to make a Condition or Covenant, according to the Intent of the Parties. Carter 98.

Not to be made againſt the Letter of the Deed; yet it may in ſome Caſes vary.

Tho' an Interpretation or Conſtruction ought not to be made againſt the Letter of a Deed, yet in ſome Caſes, a ſtrained and ſecondary Interpretation may be admitted, or a leſs genuine Interpretation may be made, where the Intent of the Parties is in æquilibrio. Carter 109. Vide Lucas 35.

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(a) The Words *Give and Grant*, enure ſometimes as a Grant, ſometimes as a Covenant to ſtand ſeiſed, ſometimes as a Releaſe; and muſt be taken in that Senſe, which will beſt ſupport the Intent of the Parties. 1 *Mod. Rep.* 178. *Co. Litt.* 302. 2 *Saund.* 96, 7.

(b) My Lord *Coke* declaimed againſt nice and ſtrained Conſtructions, which have been made of ſome Letters Patents, drawn in Queſtion, to the Diſhonour of the King, and diſinheriting of the Subject. 8 *Rep.* 56. *a.*

Every Deed ſhall be taken to be moſt ſtrong againſt the Grantor.

**Every Deed ſhall be taken moſt ſtrongly againſt him who makes it; and if it cannot take Effect, as the Parties expreſs, yet it ſhall take Effect as it may, rather than be void.** Plowd. Com. 287. b. Lucas 46.

How Conveyances at Common Law work.

**Conveyances at the Common Law work immediately on the Execution of them on the Part of him who makes them.** 2 Vent. 201 to 209. (a)

A Leaſe ſhall be taken moſt ſtrongly againſt the Leſſor.

**A Leaſe ſhall be taken moſt ſtrongly againſt the Leſſor, and take Effect as near as can be to the Intent of the Parties.** 5 Rep. 8. a.

What the Grant of a Thing includes.

**The Grant of the Thing includes all Things without which the Thing granted cannot be enjoyed.** Hob. 234.

Where a Falſity in a Deed ſhall not hurt.

**The Addition of a Falſity (b) in a Deed in Caſe of a common Perſon, ſhall never hurt, where there was Certainty before.** Cro. Car. 548. pl. 1. **But where there is a Falſity in the King's Grants, prejudicial to the King, or a Miſinformation of the King's Title, there they ſhall be void.** Ibid.

Every Covenant and Grant ſhall be taken moſt againſt the Makers.

**Every Covenant and Grant ſhall be taken moſt ſtrongly againſt him who makes it; and if the Words thereof have a double Signification, this ſhall extend to the Diſadvantage of him who ſpeaks them, and they ſhall be conſtrued moſt to the Advantage of the other.** Plowd. Com. 287. b. 2 Roll. Abr. 65. Co. Litt. 146.

The Intent is the chief Thing to be conſidered in all Agreements.

**In all Agreements made between Parties, the Intent is the chief Thing to be conſidered; (c) and if by the Act, or other Accident, not ariſing from the Party himſelf, the Grant cannot be performed according to the Words; yet the**

(a) There are ſome Opinions, that where a Conveyance may enure two Ways, the Common Law ſhall be preferred, unleſs it appears the Party intended that it ſhould paſs by Statute: And therefore the Courſe on a Leaſe and Releaſe was, to put the Words *Bargain and Sell* into the Leaſe for a Year, to bring it within the Statute of Uſes. 2 *Mod.* 252.

(b) A falſe Conſideration, material, if paſt, ſhall not hurt a Grant of the King; yet if a future Conſideration be not performed it will avoid it. *Hob.* 231.

A Conſideration which is void in Part, is void *in toto.* *Hob.* 226.

Where the Law eſtabliſhes free Gifts without Conſideration.

The Law eſtabliſhes free Gifts without Conſideration. *Hob.* 230. unleſs they come within the Statutes of Fraudulent Conveyances. Which ſee in Chapter *Feoffment.*

(c) It is for the Honour of the Law, that Men ſhould enjoy their Bargains, according as they intended. 2 *Mod.* 239.

ſame ſhall be performed as near to the Intent as may be. Plowd. Com. 290. b.

Where a Diſjunctive taken for a Copulative, and a Copulative for a Diſjunctive.

It is often in our Books, that a Diſjunctive is taken for a Copulative, and a Copulative for a Diſjunctive, to make the Words to ſtand with Reaſon, and the Intent of the Parties. Plow. Com. 289. a. 5 Rep. 112. a. 1 Vent. 62. Fitz-Gib. 214 to 224.

The Render of a Fine, ſhall have the ſame Conſtruction as another Conveyance.

What is contained in the Render of the Fine ſhall be of the ſame Condition, Quality and Conſtruction as another Conveyance between Party and Party, and need not have ſuch preciſe Form as a Writ or Judgment: And a Conveyance by Fine, and a Grant and Render, ſhall have the ſame Conſtruction as another Conveyance between Party and Party ſhall have. 5 Rep. 38. a. b.

Where the Word *Premiſſes* ſhall not extend to the Thing excepted.

A Man lets a Leaſe for Years of a Farm (except one Cloſe called N.) the Leſſee covenants to do ſeveral Things concerning the Premiſſes: The Word Premiſſes ſhall not extend to the Cloſe excepted, but only to that which is Prædimiſſa. 11 Rep. 50. b. 51. a.

A Diverſity between two Sentences importing ſeveral Grants, and one and the ſame Sentence.

There is a Diverſity between two diſtinct Sentences in a Deed, importing ſeveral Grants, and one and the ſame Sentence; (a) as when the Grant is Dedi, &c. Redditum viginti Librarum exeund. de Manerio de D. & Terris & Tenementis meis de *D.* in Com. *K.* de Terris & Tenementis meis alibi, in eodem Comitatu dicto manerio ſpectan'. In this Caſe there are two Sentences, and each may ſtand of it ſelf; for here is an Iteration de Terris & Tenementis, which amplifies and enlarges the Tenements out of which the Rent iſſues: But where there is no Iteration or Enlargement of the Lands and Tenements, after the aut alibi; but the aut alibi doth not enlarge the Grant of the Rent, to make it iſſue out of other Lands or Tenements, but enlarges the Towns or Places, in which the Land before charged extends, there it is otherwiſe. 6 Rep. 39. a. b.

(a) Where the Clauſe is not in one intire Sentence but diſtinct, and disjoined from the other, there cannot be any Reſtriction. *Plow. Com. 395. a. Vide Cro. Jac. 476. pl. 9.*

What may paſs by the Name of an Houſe with the Appurtenances.

By the Name of an Houſe or Tenement, with the Appurtenances, 100 Acres of Land may paſs, (b) and tho' they lie at a great Diſtance from the Houſe, or in another Pariſh or Village, yet they will paſs. 2 Sid. 76. Vide 1 Williams 603.

(b) But the beſt Way is to ſay, *with the Lands therewith uſed.* Vide 1 Williams 603.

How far reputed Parcel will go.

In Letters Patent, the Words (or reputed) will not make Lands in Reputation Parcel of the Tenement, to paſs, unleſs they appear to be Parcel by Deed or Record. Ibid.

A Leaſe to *A.* for Life, Remainder to *B. in forma prædicta.*

Where Lands are let to A. for Life, Remainder to B. in Forma prædicta, this is an Eſtate to B. for Life. 2 Ventr. 215.

Where vain Words ſhall operate.

Words being vain and idle in the Sentence, in which they are placed, ſhall have their Operation upon a ſubſequent Sentence. 2 Saund. 166.

What appears not to be, is as if it were not.

What appears not to be, muſt be taken in Law to be as if it were not. Vaugh. 169.

*Ad proximum antecedens fiat relatio.*

This Rule, viz. ad proximum antecedens fiat relatio, expounded. Hard. 77.

One Part of a Sentence, reſtrained and expounded by another.

Where one Part of the Sentence ſhall be reſtrained and expounded by the other, and where not. 1 Saund. 59, 60. 2 Saund. 168.

Where a particular Covenant ſhall reſtrain a general Covenant.

A particular Covenant in a Deed may reſtrain a general Covenant in Law. 1 Saund. 60. Vide 4 Co. 80. Cr. Eliz. 674. Yel. 175.

Where Words in the Beginning of a Sentence refer, and where Words in the Middle.

Words in the Beginning and Concluſion of a Sentence refer to the whole; but Words in the Middle of a Sentence ad medium tantum. 1 Sid. 312. pl. 26. Fitz-Gib. 214 to 224. And. 199, 200. Vide 297, 298.

Indentures for the Declaration of Uſes, may be void in Part, and good in Part.

Indentures, as to the Direction and Declaration of Uſes, may loſe their Force in part, and ſtand good in part. 10 Rep. 86. b. 87. a.

No Equitableneſs can alter the Law.

In all Caſes where the Law is clear, no Equitableneſs can alter it; but where it is ambiguous, then a Conſtruction ſhall be made for the leſſer Inconvenience. Jones Ch. J. 2.

How Wills, Acts of Parliament, and Awards to be expounded.

Teſtaments, Acts of Parliament and Arbitraments, are interpreted according to the Intent. 1 Jones 105.

How an Act of Parliament can be made void.

An Act of Parliament cannot be taken away, but by an Act of as high a Nature, viz. another Act of Parliament, and not by Inference, but by expreſs Words. 1 Jones 106.

How it is where the Act of God intervenes.

*Actus Dei nemini facit injuriam.*

When the Law preſcribes a Mean to perfect or ſettle any Right or Eſtate, if by the Act of God this Mean by any Circumſtance becomes impoſſible, yet no Party who was to have received Benefit, if the Mean had been executed with all Circumſtances, ſhall receive any Prejudice, for the not executing of it in ſuch Circumſtance, which became impoſſible by the Act of God; ſo that all is done by the Parties which can be done without Laches: For it is againſt Reaſon, that thoſe Things, which by the Act of God are inevitable, and no Induſtry can avoid, ſhall

Inevitable Acts ſhall not prejudice where there is no Laches.

be conſtrued in Prejudice of any one, in whom there was no Laches. 1 Rep. 97. b. Shelley's Caſe. See more of this Matter there, 98, &c.

How it is, where Letters Patent ſhall be taken to two Intents.

How to one good, and to another void.

Where Letters Patent may be taken to two Intents good, in many Caſes they ſhall be taken to ſuch Intent as is moſt beneficial to the King; but if they may be taken to one Intent good, and to another void; then for the King's Honour, and Subjects Benefit, they ſhall be taken in ſuch manner, that the Grant may take effect, for the King never intended to make a void Grant. 11 Rep. 11. a. b.

*Expoſitio* ought to be *Utilis & uſitata*.

Expoſitio ſhould be utilis & uſitata. Litt. Rep. 208.

Every Grant for an Election ſhall be moſt ſtrong for the Grantee.

It is a Rule, that every Grant ſhall be taken moſt ſtrongly for the Grantee to have Election (a). Litt. Rep. 371.

A doubtful Conveyance ſhall be intended a Common Law Conveyance.

When a Man makes a doubtful Conveyance, it ſhall be intended a Conveyance at the Common Law, and not by the Statute of Uſes. Per Jones Juſtice, March Rep. 71.

The ſame Executory Thing which is created by a Deed, may be defeated and annulled by the Conſent of all the Parties thereto.

Where a Proviſo and Covenant commence by Deed, they alſo by Deed may be annulled and defeated; and in all Caſes, when any Thing Executory is created by a Deed, the ſame Thing may by the Conſent of all Perſons, who were Parties to the Creation thereof, be by their Deed defeated, annulled and diſcharged. 1 Rep. 113. a.

Where an Indorſement is Part of a Deed, and where not.

When an Indorſement is made at the Time of the Sealing and Delivery of the Deed, it is become Part of the Deed; but where the Indorſement is after the Sealing and Delivery of the Deed, and at another Time, it is then a new Deed. Modern Caſes 237.

(a) Election is, where a Man is left to his own free Choice, to take one Thing or another, which he pleaſes.

# Rules for Expoſition of Wills.

*See* Deviſes.

**How the Intent of the Parties ought to be known.**

IN Wills the Judges ought to know the Intent of the Parties by certain and ſenſible Words, agreeable and conſonant to the Rules of Law. 1 Rep. 35. a. Vide the Rules of Conſtruction of Words in Wills, Modern Caſes in Law and Equity 123, 4, 5.

**What diſpoſing Memory a Teſtator ought to be of when he makes his Will,**

It is not ſufficient that the Teſtator hath his Memory to anſwer uſual and familiar Queſtions, but he ought to have a diſpoſing Memory, ſo that he be able to diſpoſe of his Lands with Underſtanding and Reaſon. 6 Rep. 23. a.

**or revokes it.**

A Man ought as well to be of a good diſpoſing Memory, when he revokes his Will, as when he makes it. Cro. Jac. 497. pl. 3.

**A Difference between Conveyance to Uſes and a Will.**

There is a Diverſity between a Conveyance to Uſes and a Will: For in a Conveyance to Uſes there may be an Interpoſition of Eſtates, and the Remainder ſtand good; becauſe the Remainder depends and hangs on the firſt Root. (a) But in a Will, the Remainder ſettled muſt follow the Rules of Law; and there is no Spring or Root there, after the Deviſor's Death. Carter 175.

(a) *Viz.* The Eſtate in Law is in the Covenantor.

**Words in a Will ought to have a favourable Conſtruction, and why.**

Words in a Will ought to have a favourable Conſtruction, becauſe made ſometimes in extremis, inops conſilii, and ſhall be ſo marſhalled to make it good, that thoſe Words which are laſt, ſhall be put firſt. 2 Plow. Com. 540. b. 541. a. 546. a.

The Conſtruction of a Will muſt be to anſwer the Intent,

A Teſtator being inops conſilii, there ought to be a Conſtruction made of his Words, to anſwer his Intent as near as may be, appearing in other Parts of his Will. Latch 42. Daniel and Upley. Raym. 456.

And the Words have an apparent Intent to diſinherit an Heir.

Words in a Will, which diſinherit an Heir, muſt have an apparent Intent, and not be ambiguous and doubtful; and the Intent ought to be collected out of the Words of the Will. Cro. Car. 269. pl. Lucas 520.

The Intent muſt be taken out of the Words, and not by any Avernment.

It is a general Rule to expound Wills according to the Intent; and the Intent is to be taken out of the Words of the Will, and not by any Averment. Latch 35, 36.

The Will ſhall not be void if by any Conſtruction, it may be made good.

The Law favours the Intent of the Deviſor, and will not ſuffer his Will to be void, if by any reaſonable Conſtruction it can be made good. Jones Ch. Juſtice 25. 2 Williams 282.

Doubtful Words ſhall not alter an expreſs Deviſe.

An expreſs Deviſe ſhall not be altered by doubtful Words. Hob. 65. Cro. Car. 51, 52. pl. 13.

Where the Words of a Condition may amount to a Limitation.

Expreſs Words in a Condition in a Will, may amount unto no more than a Limitation. Mod. Rep. 86. 1 Vent. 200. 1 Brownl. 65. 1 Roll. Abr. 412. Cr. Eliz. 204. Owen 112. 2 Mod. 7. 1 Lut. 809. 3 Mod. 32.

The Law hath great Reſpect to Eſtates limited by Way of Uſe.

Though the Law doth not favour an Eſtate limited by way of Uſe, ſo much as a Will, yet it hath great reſpect to it. Carter 175, 176.

A Deviſe imports a Conſideration in it ſelf, and cannot be averred to be to another Uſe.

A Deviſe imports a Conſideration in it ſelf, and therefore a Deviſe cannot be averred to be to the Uſe of another than the Deviſee, except it is expreſſed in the Will. Vernon's Caſe, 4 Rep. 4. a.

All Wills concerning Lands, ought to be in Writing. 32 & 34 & 35 *H.* 8.

All Wills concerning Lands ought to be in Writing by the Statutes of 32 H. 8. cap. 1. and 34 & 35 H. 8. cap. 5. And no Averment ought to be taken out of the Will, which cannot be collected by the Words contained in the Will. 4 Rep. 4. a. Vernon's Caſe.

How Wills of Lands ſhall be by the Statute of *Frauds and Perjuries*, 29 *Car.* 2. *c.* 3. *ſect.* 5.

All Deviſes of Lands by the Statute of Wills, or the Statute of Frauds and Perjuries, 29 Car. 2. cap. 3. ſect. 5. or by the Cuſtom of Kent, or any Borough, or any other particular Cuſtom, ſhall be in Writing, and ſigned by the Party deviſing the ſame, or by ſome other Perſon in his Preſence, and by his expreſs Directions; and ſhall be atteſted and ſubſcribed in the Preſence of the Deviſor, by three or four Witneſſes, or elſe they ſhall be utterly (a) void.

When a Will is good, without formal Signing.

But ſince this Statute a Will was made of Lands, and no Name ſubſcribed to it; but being ſealed in the

(a) So alſo it ſhall be in a Codicil for Lands, annexed and made Part of a Will.

Preſence of three Witneſſes, was adjudged a good Will, for it was written by the Party himſelf and his Name at the top, which was held a ſufficient Signing. 3 Lev. 1.

Subſcribing of Witneſſes, good, if in another Room, in the Teſtator's View.

And as to the Subſcribing of the Witneſſes, it is enough that the Teſtator might ſee them: For it hath been held, that it is not abſolutely neceſſary he ſhould ſee them do it; ſo that it may be in another Room in the Teſtator's View, or where he is ſick in Bed and the Curtains drawn, &c. 2 Salk. 688. 1 Williams 740. The Signing of three Witneſſes at three ſeveral Times in the Preſence of the Teſtator is a good Execution of a Will. Rep. of Caſes in Eq. 259. Lucas 15.

How a Condition ſhall be created in a Will.

A Condition in a Will is a Thing odious in Law, which ſhall not be created without ſufficient Words. 2 Leon. Caſe 40.

A Deviſe of his Lands, and after in his Will he deviſes a Rent-charge out of his Lands.

If a Man by Will in Writing deviſes Lands to one and his Heirs, and afterwards in another Clauſe deviſes a Rent-charge out of theſe Lands to one and his Heirs; this is good to one of the Rent, and to the other of the Land; and the Rent in Conſtruction of Law ſhall be firſt deviſed, though it was laſt (a) deviſed. Plow. Com. 541.

Laſt Deviſe in a Will ſhall take Place, where there are two Deviſes of the ſame Thing.

If in a Will there are two Deviſes of the ſame Thing, the laſt ſhall take Place: (b) But where the Deviſe was to one of Lands in Fee, and in the ſame Will the ſame Lands were deviſed to another; this, it was ſaid, made them Jointenants: And if a Deviſe of Lands is to one Perſon in Fee, and to another for Life, &c. both may ſtand. 3 Leon. 11. See Carter 174. Yelv. 209. * 1 Nelſ. Abr. 654. Co. Litt. 188. a.

But in ſome Caſes both Deviſes may ſtand.

Wills muſt be conſtrued according to Intent.

It is a general Rule to expound Wills according to the (c) Intent, and to find the Intent, there are two Rules.

Where the Intent to be taken.

1. It ought to be taken out of the Words of the Will, and not by an Averment.

Where there are two Deviſes in a Will, it is the laſt ſhall ſtand.

(a) If in the Premiſſes of a Will, Lands are deviſed to *A.* in Fee, and at the End of the Will he deviſes the ſame to *B.* in Fee, it is the laſt Deviſe which is his Will, and that ſhall ſtand. *Plow. Com.* 541. *a.*

Latter Part of a Will overthrows the former.

(b) For as a latter Will doth overthrow a former; ſo the latter Part of a Will overthrows the former Part of it. 1 *Co. Inſt.* 112. *Plowd.* 341.

Except an Explanation.

* Where a latter Clauſe in a Will was held an Explanation.

(c) The ſeveral Reaſons why they ſhall be taken according to the Intent. *Latch* 42.

And how to be expounded.

2. If the Intent be not apparent out of the Words, then it muſt be expounded by the Common Law. Latch 39, 40. Daniel verſus Upley.

Not to be favoured where it is repugnant.

~~A Will ſhall not be allowed and favoured, where it~~ is repugnant in it ſelf. Ibid.

Muſt not croſs the Grounds of the Law.

And it ſhall not be allowed to croſs the Grounds of Law. Ibid.

The Intent to be conſtrued by the Words.

The Intent is to be conſtrued by the Words of the Will, and not by any Thing Dehors. Latch 42. Vide what Evidence ſhall or ſhall not be allowed to explain Wills, Lucas 99, 418, 400, 100. 1 Williams 9, 116. 2 Williams 136. 210. 2 Vern. 98, 337, 627, 646. 5 Co. 68. Vern. 473. 1 Cha. Ca. 19. b. 2 Vern. 736. Eq. Ca. Abr. 230, 243.

What Eſtate the Word *Eſtate* will paſs in a Will.

The Word Eſtate in a Will will paſs a Freehold as well as a Chattel. Modern Caſes 107, 108, 109. Style 281. 1 Lev. 91. 1 Mod. 100. 2 Chan. Ca. 262. 4 Mod. 89. But where it is coupled with Chattels, it is otherwiſe. Cr. Car. 447. 1 Roll. Abr. 834. 1 Jones 380. Or where it is intended to deſcribe the Thing only, and not the Intereſt in the Thing. 2 Williams 335.

How it is where he gives the Reſidue of his Eſtate real and perſonal.

A Man hath an Eſtate conſiſting of two Parts, viz. real and perſonal; his perſonal Eſtate is as much Part of his general Eſtate, as his real Eſtate is; and if he gives by his Will ſome of his perſonal Eſtate away, and in the ſame Will the Reſidue of his Eſtate, real and perſonal Eſtate; this ſhall paſs the Freehold as well as the Reſt of his perſonal Eſtate. Modern Caſes 108.

Where Lands are deviſed paying ſo much Money, where it is but for Life, and where it is a Fee.

In all Caſes where Lands are deviſed to a particular Purpoſe, viz. with the Profits to educate a Child, or to pay ſo much Money out of the Profits; this is but an Eſtate for Life: So if the Land is of the Value of 3 l. per Annum, he deviſes 30 or 40s. per Annum to J. S. this is but an Eſtate for Life, becauſe the Deviſee can have no Loſs; but if after the Payment he dies before Satiſfaction, in that Caſe it is a Fee. 6 Rep. 16. a. 2 Mod. 25. 1 Lev. 249. 2 Salk. 685. Cr. Car. 158, 416. 1 Jones 211. See Modern Caſes 111.

A Reverſion will paſs by the Deviſe of the Reſt.

Where by the Deviſe of the Reſt a Reverſion will paſs. Modern Caſes 111. Mod. Ca. in Law and Eq. 123, 4, 5.

For the Expoſition of Wills.

For the Expoſition of Wills, ſee Modern Caſes from fol. 106 to 113.

How it is upon a Deviſe to an Heir at Law paying Legacies, and upon Default, Remainder over.

If a Deviſe be to the Heir at Law paying ſuch Legacies, and for Default thereof, Remainder over; the Heir till Default is in by Deſcent, and the other's Intereſt is by executory Deviſe. Per Holt Ch. Juſt. Modern Caſes 241. Ante Tit. Deviſe.

# Feoffments.

What a Feoffment is.

**A Feoffment is the Gift or Grant of Manors, Meſſuages, Lands, or other corporeal Inheritances, (a) and is the moſt ancient and moſt neceſſary Conveyance, both for that it is ſolemn and publick, and therefore beſt to be remembred and proved; and alſo where the Entry of the Feoffor is lawful, (b) it cleareth all Diſſeiſins, (c) Abatements, (d) Intruſions, (e) and other wrongful and defeaſible Eſtates, which neither a Fine, Recovery, Bargain and Sale, or any other Conveyance elſe doth.** Co. Litt. 9. a. 49. a.

It cleareth all Diſſeiſins, Abatements, Intruſions.

It cannot be made of Things which lie in Grant, and why.

(a) But it cannot be made of ſuch Things which lie in Grant, whereof Livery of Seiſin cannot be made; as Advowſons, Rents, Reverſions, or ſuch other Things. *Co. Litt.* 49. *a.*

It bars preſent Rights.

(b) A Feoffment regularly bars the Feoffor of all preſent Rights, ariſing to the ſame Parties, by Cauſes before the Feoffment. *Hob.* 337.

Nay, Livery is of ſuch Force, that it excludes the Feoffor, not only from all preſent, but from all future Rights and Titles. 1 *Rep.* 111. *b.*

What is a Diſſeiſin.

(c) A Diſſeiſin is a wrongful putting of a Man out of Seiſin. *Co. Litt.* 153. *b.* 277. *a.*

What is an Abatement.

(d) Abatement is where a Man dies ſeiſed of an Eſtate of Inheritance, and between the Death and the Entry of the Heir, a Stranger interpoſes himſelf and abates. *Co. Litt.* 277. *a.*

What is an Intruſion.

(e) Intruſion is when the Anceſtor died ſeiſed of any Eſtate of Inheritance, expectant upon an Eſtate for Life, and the Tenant for Life dieth; and between the Death of the Tenant for Life and the Entry of the Heir, a Stranger interpoſes himſelf and intrudes. *Co. Litt.* 277. *a.*

Alſo he that enters on any of the King's Demeſnes, and takes the Profits, is an Intruder upon the King's Poſſeſſion. *Ibid.* and *Plowd. Com.* Caſe of *Mynes.*

Where a Man is out of Poſſeſſion, it is a Feoffment only that reduces the Eſtate, and makes a perfect Tenant of the Freehold.

**If a Man be out of Poſſeſſion, neither a Fine, Recovery, Bargain and Sale inrolled, or other Conveyance, doth avoid an Eſtate by Wrong, and reduce the Eſtate of the Feoffee, and make a perfect Tenant of the Freehold; but a Feoffment only with Livery of Seiſin made upon the Land.** Co. Litt. 49. a.

Might formerly be made by Parol, but now muſt be by Deed only; they muſt be either by Deed Poll or Indenture.

**Feoffments were uſually made in former Times by Parol,** (a) **Deed Poll and Indenture, with Livery of Seiſin.**

No Parol Feoffments now.

29 *Car.* 2. *cap.* 3.

(a) But now by the Statute of *Frauds and Perjuries* made 29 *Car.* 2. *cap.* 3. all Parol Feoffments, though with Livery, are to extend no farther than Eſtates at Will; ſo that now there are only two Sorts of Feoffments, *viz.* by Deed Poll or Indenture, to both which there muſt be Livery.

By Deed Poll or Indenture with Livery.

The Poll Deed, how to be.

**The** (b) **Poll Deeds were uſually made in** Latin, **and did begin,** Sciant præſentes & futuri quod ego, &c. **but ſometimes in** Engliſh, **and did begin,** To all Chriſtian People, &c. **and were called Deeds Poll, becauſe they are cut plain at the Top without indenting.** Co. Litt. 229. a.

(b) In Deeds Poll, the Words ſhall be taken moſt ſtrong againſt the Grantor. 1 *Leon.* Caſe 446. Contrary in the Caſe of Indentures; the Words there ſhall be taken according to the Intent of both Parties. *Ibid. Lucas* 47. *Vide* 2 *Roll. Abr.* 65. *Co. Litt.* 146.

By Indenture, how to be.

(c) **Indentures begin,** This Indenture, **and muſt be indented at the Top; for the Writing of** This Indenture, **without the actual Indenting of it, will not do.** Co. Litt. 229. a.

In Indentures the Words are the Words of both Parties.

(c) In Indentures the Words ſhall be taken according to the Intent of the Parties; for there the Words are the Words of both. 1 *Leon.* Caſe 446. *Plowd. Com.* 134. *a. Cro. Jac.* 398. *pl.* 4. *Lucas* 47, 48. *Vide where the Grantor's Name was omitted in the Body of a Tripartite Deed, and ſupplied by the Intention,* Lucas 45, *&c.*

And it is an Eſtoppel; not ſo in a Deed Poll, and why.

An Indenture is an Eſtoppel, but a Deed Poll is not; for if a Man takes a Leaſe by Deed indented, there both Parties are concluded, but not ſo by a Deed Poll; for there the Leſſee may ſay, That the Leſſor had nothing in the Land, at the Time of the making the Leaſe. *Co. Litt.* 47. *b.* 1 *Roll. Abr.* 871.

A Deed is always good againſt the Maker.

A Deed may be void as to ſome Perſons, and to ſome Purpoſes; but it is always good againſt the Perſon who makes it. *Hob.* 166.

They muſt be both written in Parchment or Paper.

**Both the Poll Deeds and Indentures muſt be written in Parchment or Paper.** Co. Litt. 229. a.

What are the Words of a Feoffment.

The Words of a Feoffment are commonly theſe, Give, grant and enfeoff, but be ſure to put in the Word Enfeoff.

The eight formal or orderly Parts of a Feoffment.

There are eight formal or orderly Parts in a Deed of Feoffment.

1. The Premiſſes of the Deed.
2. The Habendum.
3. The Tenendum.
4. The Reddendum.
5. A Clauſe of (a) Warranty.

(a) Now by the Statute of the 4th and 5th of Queen *Anne* it is enacted, That all Warranties to be made by any Tenant for Life of any Lands, *&c.* the ſame coming or deſcending upon any Perſon in Reverſion or Remainder, ſhall be void; and alſo that all collateral Warranties to be made of any Lands, *&c.* by any Anceſtor who hath no Inheritance in Poſſeſſion in the ſame, ſhall be void againſt his * Heir.

* *Note*; This extends only to Warranties by Tenant for Life, and collateral Warranties by an Anceſtor who hath no Inheritance in Poſſeſſion. A collateral Warranty was one of the harſheſt and moſt cruel Points of the Common Law. *Lucas* 3, 4.

6. In Witneſs, comprehending the Sealing.
7. The Date, containing the Day, Month and Year of the King, or of our Lord. Co. Litt. 6. a.
8. The Witneſſes Names thereto. Co. Litt. 6. b.

The Office of the Premiſſes.

The Office of the Premiſſes in a Deed is twofold. Co. Litt. 6. a.

1. To name rightly the Feoffor and Feoffee.
2. To comprehend the Certainty of the Lands or Tenements to be conveyed by the Feoffment, either by expreſs Words, or which may be reduced to a Certainty. Vide 9 Co. 47. b. Hob. 275, 313. 2 Roll. Abr. 65. Cr. Ja. 564. Cr. Eliz. 58.

The *Habendum.*

The Habendum hath alſo two Parts. Co. Litt. 6. a.

1. To name again the Feoffee. And,
2. To limit the Certainty of the Eſtate. 2 Rep. 55. a. 2 Roll. Abr. 65. 9 Co. 47. (a) See more in Tit. Habendum.

The *Habendum* muſt paſs away the Eſtate preſently, and not *in futuro.*

(a) The *Habendum* muſt paſs the Eſtate preſently, *viz.* *To have and to hold*, to the Feoffee and his Heirs, to to the Uſe of him and his Heirs, without ſaying from the Day of the Date, or at any other Time to come; as to ſay from *Michaelmas* next, or the like, in theſe Caſes it is void. See *Co. Litt.* 217. *a.* 5 *Rep.* 94. *b.* *Hob.* 171.

The *Tenendum.*

**The** Tenendum **muſt be of the chief Lord of the Fee.** Co. Litt. 6. a.

The Clauſe of Warranty.

**As to the Clauſe of Warranty, it is good** (a) **without it.** Co. Litt. 7. a.

(a) *Dedi* is a Warranty in Law.

In Witneſs.

In Witneſs whereof I have hereunto ſet my Hand and Seal, *&c.* **is added in a Deed Poll, becauſe the Seal is the moſt eſſential Part of the Deed.**

How the *In Witneſs* is to be when by Indenture.

**But where it is by Indenture, it muſt be ſaid,** In Witneſs whereof the Parties to theſe preſent Indentures have hereunto interchangeably ſet their Hands and Seals the Day and Year firſt (b) above-written.

(b) Whatſoever is written in a Deed after the Words *In Witneſs, &c.* ſhall be Part of the Deed, as well as that written before in the Deed. *Moor,* Caſe 5. So where an Indorſement is made at the Time of the Sealing and Delivery, it is become Part of the Deed; but where it is after the Sealing and Delivery, and at another Time, it is a new Deed. *Modern Caſes* 227.

What written after, ſhall be Part of the Deed.

When in Caſe of an Indorſement, and when not.

A Rent may be reſerved upon it.

A Gift to a Man and his Heirs, without ſaying more, is good.

**There may be a Rent reſerved upon a Feoffment, and Warranties were uſual in Feoffments; but they are good without Premiſſes,** Habendum, Tenendum, Reddendum, **or Clauſe of Warranty; for if a Man gives to another and his Heirs, without ſaying more, if he ſeals and delivers the Deed, and makes Livery of Seiſin, it is** (c) **good.** Co. Litt. 7. a.

(c) So it is if by the Deed the Feoffor gives ſuch Lands, To have and to hold to *B.* and his Heirs, and makes Livery, though the Feoffee is not named in the Premiſſes, it is good. *Co. Litt.* 7. *a.* *Cr. Eliz.* 903. 2 *Roll. Abr.* 66, 67.

Good tho' the Feoffee not named in the Premiſſes.

Where there needs no Conſideration of Money or Blood. But there muſt be Livery of Seiſin, by the Feoffor or Attorney authorized.

**To a Feoffment there needs no Conſideration of Money, Blood, or** (d) **otherwiſe: But there muſt be**

(d) This was before the Statutes of 13 *Eliz. cap.* 5. and 27 *Eliz. cap.* 4. *againſt Fraudulent Conveyances*; but ſince thoſe Statutes, if a Man makes a voluntary Feoffment without good Conſideration, it ſhall be fraudulent againſt a Purchaſer * for a real Conſideration, a Mortgagee, a Judgment or Statute-Creditor for good Conſideration. See the † Statutes, and alſo *Cro. Jac.* 270. *pl.* 3. *Lucas* 247, 489, *&c.* 2 *Williams* 203.

Where it ſhall be void for want of good Conſideration, by Statute.

* But good amongſt themſelves. *Cr. Ja.* 270. 2 *And.* 272.

† *Note*; Upon a Trial the Conſideration of Money paid, or the Money for which the Judgments or Statutes are entred into, muſt be proved.

**Livery**

It paſſes by Tranſmutation of Eſtate.

**Livery of Seiſin made either by the Feoffor, or an Attorney authoriſed by him. And this Conveyance paſſes away the Eſtate by Tranſmutation of the Eſtate from one Perſon to (a) another.** Rol. Abr. Part 2. f. 1.

Where the Law eſtabliſhes free Gifts without Conſideration, and where not.

(a) The Law eſtabliſhes free Gifts without Conſideration. *Hob.* 130. But *note*; This is in Caſe of a voluntary Conveyance; but it is void in Caſe of a Purchaſer, *&c.* for a real Conſideration: Alſo if I convey Lands which I have on the Part of the Mother to *J. S.* and his Heirs, without any Conſideration, the Uſe ſhall be void, and the Land ſhall return again to me and my Heirs on the Part of the Mother; for the Law doth conſtrue the Uſe the ſame in State and Quality as the Land was.

Where the Uſe ſhall be void, and the Land return.

How to declare an Uſe upon a Feoffment.

But if I declare the Uſe to me and my Heirs, or upon ſuch Feoffment reſerve a Rent to me and my Heirs; it ſhall go to my Heirs at the Common Law, it being a new Thing divided from the Land it ſelf. *Hob.* 31. *Co. Litt.* 13. *a.* 23. *a.* 231. *a.* 1 *Rep.* 100. *b.* *Dy.* 134. *a.* So that a Feoffment without Conſideration to a Man and his Heirs, and ſays not to whoſe Uſe it ſhall be, it ſhall then be to the Uſe of the Feoffor and his Heirs. 9 *Rep.* 8. *a.* 11. *b.* See 1 *Lutw.* 823. *arguendo. Per Whitlock*, Juſtice, *arguendo.* A Feoffment is made of Lands, they paſs not without Conſideration, but remain to the Uſe of the Feoffor. *Latch* 100. *Co. Litt.* 23. *a.* 2 *Sid.* 157.

How it is where no Uſe is mentioned in the Feoffment.

Before the Statute of *Weſtm.* 3. *Quia emptores terrarum*, If a Man had made a Feoffment in Fee, without declaring of any Uſe, it ſhould have been to the Uſe of the Feoffee, becauſe there is a ſufficient Conſideration between the Feoffor and Feoffee to raiſe the Uſe, *viz.* the Seigniory created by the Law betwixt them; but now by the ſaid Statute ſuch Conſideration is taken away, and then upon ſuch Feoffment without Conſideration or Declaration of Uſe, it is to the Feoffor himſelf. *Manwood*, Juſtice. *Brent*'s Caſe, 2 *Leon.* Caſe 24. and *fol.* 15, 16.

Difference between Uſes raiſed by Feoffment and by Covenant.

There is a Difference between Uſes raiſed by Feoffment, and when by Covenant to ſtand ſeiſed; for when an Uſe is raiſed by way of Feoffment, then all is out of the Feoffor; and nothing remains but a bare Authority to raiſe Uſes out of the Poſſeſſion of the Feoffees; and if ſome of them are void, yet the others may be good. 1 *Leon.* 197.

How it is when the Uſes are raiſed by Feoffment.

But where a new Uſe is raiſed by way of Covenant, there the Covenantor continues in Poſſeſſion, and there the Uſes limited, if they be according to Law, ſhall raiſe and draw the Poſſeſſion out of him; but if not, the Poſſeſſion ſhall remain in him until a lawful Uſe ſhall ariſe, which before its Time ſhall not ariſe for any Defect in the precedent Uſe. 1 *Leon.* Caſe *279. fol.* 197.

How by Fine, or Recovery. How by Bargain and Sale, or Covenant to ſtand ſeiſed.

The Uſes that ariſe by way of Transmutation of Eſtate, as by Feoffment, Fine or Recovery, may ariſe without any Conſideration at all. *Carter* 143. Otherwiſe where by Bargain and Sale, or by Covenant to ſtand ſeiſed; but ſtill they are ſubject to the Statutes againſt fraudulent Conveyances; which ſee before, and 1 *Co.* 176. *Mo.* 578.

What Conſideration muſt be to a Bargain and Sale, or a Covenant to ſtand ſeiſed.

How to be made and when to be inrolled.

But to a Bargain and Sale, or a Covenant to ſtand ſeiſed, there muſt be a ſufficient Conſideration, (viz.) for a Bargain and Sale, which is a real Contract on a valuable Conſideration for the paſſing of an Eſtate of Inheritance or Freehold in Poſſeſſion, Reverſion or Remainder, of any Manors, Lands, &c. there muſt be a Conſideration of Money, or other valuable Conſideration; and muſt be made by Indenture, and inrolled within ſix Months. 2 Inſt. 672. 8 Rep. 93.

Conſideration for Covenants to ſtand ſeiſed; theſe paſs only an Uſe, and the Statute the Poſſeſſion; the Eſtate remains in the Covenantor.

Where the Poſſeſſion ſhall remain.

And for a Covenant to ſtand ſeiſed, there muſt be a Conſideration of Blood, &c. (a) But theſe Conveyances paſs only an Uſe, and the Statute of Uſes the Poſſeſſion, and not the Eſtate; for that remains ſtill in the Covenantor, if the Uſes are limited according to Law; (b) for if they are, they ſhall riſe and draw the Poſſeſſion out of the Covenantor: But if not, the Poſſeſſion ſhall remain in him until a lawful Uſe ſhall ariſe. 1 Leon. 197.

What Conſiderations are valuable.

(a) The Conſideration of Nature is the moſt valuable Conſideration which can be. *Poph.* 50.

What Conſiderations will raiſe an Uſe upon a Covenant to ſtand ſeiſed.

There are only two Conſiderations to raiſe Uſes upon a Covenant to ſtand ſeiſed, *viz.* natural Love and Affection, which is the Advancement of Blood; or Conſideration of Marriage, which is the joining of the Blood and Marriage together. *Carter* 138, 139.

Divers good Conſiderations will not raiſe an Uſe.

As for divers other good Cauſes and Conſiderations, they are general and uncertain, and ſo ſhall not be any Conſiderations to raiſe an Uſe; and *Nil operatur inde.* Carter 138. 1 Rep. 176.

Nothing moves out of the Covenantor.

(b) In a Covenant to ſtand ſeiſed to Uſes, nothing moves out of the Covenantor; he retains the Land and directs the Uſes, and keeps ſufficient in him to maintain them. 1 *Vent.* 372, 373.

When the Uſes not diſpoſed of ſhall remain to the Covenantor to ſerve the contingent Uſes.

But not ſo in a Feoffment to Uſes, for there they are all gone out of the Feoffor upon the Livery.

In a Covenant to ſtand ſeiſed to Uſes, all the Uſes that are not diſpoſed of, return back and remain in the Covenantor to ſerve the contingent Uſes when they happen; but in a Feoffment to Uſes, the Uſes are diſpoſed of by the Livery, the Eſtate in

**Law being in the (a) Feoffees. See** Carter 202.

The Difference between a Feoffment to Uſes, and Covenant to ſtand ſeiſed.

(a) A Feoffment to the Uſe of *A.* for Life, Remainder to *B.* *A.* refuſes to take the Eſtate; *B.* ſhall then take preſently, becauſe the whole Eſtate is out of the Feoffor by the Livery; But if it had been by Covenant to ſtand ſeiſed, *B.* ſhould not take till after the Death of *A.* but it ſhould reſt in the Covenantor, becauſe he had not parted with the Poſſeſſion, and therefore ſhall have the Uſe in the mean Time; which is not in the Caſe of a Feoffment to Uſes, the Eſtate being only in the Feoffee, and paſſed out of the Feoffor by the Livery. 2 *Lev.* 77. See the Lord *Paget's* Caſe in the Rector of *Cheddington's* Caſe, 1 *Rep.* and in 1 *Leon.* 1. Caſe 279.

How it is in a Feoffment, where the Uſes are declared for Life, or in Tail only.

But if a Man makes a Feoffment, and declares the Uſes for Life, or in Tail, the Reſidue of the Uſe not diſpoſed of is in himſelf by Reſult. *Ibid.*

How it is upon a Feoffment in Fee, to Uſes without Conſideration.

If a Man makes a Feoffment in Fee, without a valuable Conſideration, to divers Uſes, ſo much of the Uſe as he diſpoſeth not of is in him, as in his antient Uſe, in Point of Reverter. *Co. Litt.* 23. *a.* 13. *a.* 1 *Rep.* 100. *b.*

The Difference between Uſes declar'd upon an Eſtate executed, and where by Covenant to ſtand ſeiſed.

Where a Man, in Conſideration of 200 *l.* paid by the Father for a Marriage-Portion with his Daughter to his Son, covenants to execute an Eſtate of ſuch Lands by ſuch a Time, to the Uſe of the Man and Woman (agreed to be married) for their Lives, and after their Deceaſe, to the Uſe of the Iſſue of their Bodies; and he afterwards executes the Eſtate by Feoffment, Fine and Recovery, to the aforeſaid Uſes, and the Marriage doth not take Effect; it was held, That the Uſe did ariſe to the Man and Woman agreed to be married, as well as if the Marriage had taken Effect; which it did not: Becauſe it is a Uſe declared upon an Eſtate executed, *viz.* by Feoffment, Fine and Recovery, * which needed not any Conſideration: But if it had been an Uſe declared upon a Covenant to ſtand ſeiſed upon a Conſideration of Marriage and Money, there no Uſe will ariſe without Marriage, although the Money was paid; becauſe the Marriage is the principal Conſideration in the Intent of the Parties, and the Money is but the Acceſſory, which attends the Marriage. *Moor*, Caſe 247.

* Or either of them will do.

How the Execution of a Feoffment is to be.

**The Execution of a Feoffment is by Signing, Sealing and Delivery of the Deed, and alſo by Livery of Seiſin (b) made by the Feoffor to the Feoffee, or elſe by Attorney or Attornies, authorized by Deed to deliver Seiſin, or to receive**

What paſſes by the Delivery of the Deed only.

(b) But nothing of the Land paſſes by the Delivery of the Deed, tho' upon the Land. *Poph.* 49. But the Feoffee ceive it, as the Caſe ſhall be. (a)

Feoffee, upon his Entry (until Livery) will become Tenant at Will to the Feoffor. *Litt. ſect.* 60. Tho' if the Deed is delivered on the Land, in the Name of Seiſin of the Land; or if the Feoffor ſays to the Feoffee, *Take and enjoy the Land, according to the Deed*, or *Enter into the Land, and God give you Joy of it*; theſe Words would amount to a Livery. *Co. Litt.* 57. *a.* 48. *a.* 9 *Co.* 137. *b.* 6 *Co.* 26. 2 *Roll. Abr.* 7. *Vide Cr. Ja.* 80. *which ſeems cont'.*

What by Delivery on the Land in the Name of Seiſin.

A Delivery of any Thing upon the Land, in the Name of Seiſin, altho' it be nothing relating to the Land, as a Gold Ring, *&c.* it is good. *Co. Litt.* 48. *a.*

What ſhall be a good Delivery.

(a) A Deed executed by Livery, ſhall not take effect any other Way. *Anderſon* 113. *Poph.* 49.

A Deed executed by Livery, ſhall not take Effect any other Way.

A Father, in Conſideration of Love which he bears to his Son, and for natural Affection to him, bargained and ſold, gave, granted and confirmed, to him and his Heirs, the Land; the Deed was inrolled: This did not paſs the Land, unleſs Money had been paid, or it were executed with Livery; but becauſe the Son was then in Poſſeſſion, it was held, that it ſhall enure as a Confirmation. *Cro. Jac.* 127. *pl.* 17. 4 *Rep.* 31. *a.*

A Father in Conſideration of Love, bargains and ſells without Conſideration of Money, and the Deed is inrolled.

The Son being in Poſſeſſion, it ſhall be good as a Confirmation, not for any other Conveyance.

How Seiſin is to be delivered of an Houſe.

The Manner of Delivering of Seiſin by the Feoffor to the Feoffee, is thus:

If it be an Houſe, the Feoffor takes the Ring of the Door, or other Thing belonging to the Door, and delivers the Ring, or other Thing, to the Feoffee, the Feoffor and Feoffee both holding the Deed of Feoffment, and the Ring of the Door, or other Thing, the Feoffor ſaying theſe Words, I do here deliver you Seiſin and Poſſeſſion of this Houſe according to the Form and Effect of this Deed. (b) *Co. Litt.* 48. *a.* See *Poph.* 49.

(b) *Note*; If there be a Leaſe for Years in Being, and afterwards the Leſſor makes a Feoffment, and delivers Seiſin (the Leſſee being in Poſſeſſion, and not aſſenting to the Feoffment) this Livery is void; for tho' the Feoffor hath the Inheritance in him, it is not ſufficient, for the Livery muſt be given of the Poſſeſſion; but if the Leſſee is abſent, and none of his Family upon the Ground, though his Cattle are there, the Livery ſhall be good. *Co. Litt.* 48. *b.* 2 *Roll. Abr.* 4. *Bro.* Tit. *Feoffment*, 66. *but Moor* 11. *cont.* See *Dyer* 18. *pl.* 106, 107.

If there be Leſſee for Years in Poſſeſſion, he muſt aſſent, or elſe it will be void.

*Note*; If the Leſſee be a Witneſs to the Deed, or to the Livery, it is good, for that ſhews his Aſſent.

But where a Man leaſes a Houſe and ſeveral Cloſes for Years, and afterwards makes a Feoffment of them, and makes Livery in the Cloſes, (the Leſſee, his Wife or Servants being in the Houſe) this Livery is void for the Whole: For the

Leſſee cannot be upon every Part of the Land, for the Preſervation of his Poſſeſſion; ſo that his being in the Houſe * for the Preſervation of his Poſſeſſion therein, is ſufficient to continue it. *Co.* 2 *Rep.* 31. *b.* *Mo. pl.* 397. 2 *Roll. Abr.* 4. *Co. Litt.* 48. *b.* *Dyer* 18. *b.*

* Which is the Principal. 2 *Rep.* 31. *b.*

A Leaſe is made for Years of an Houſe and Cloſe called *R.* and of divers other Lands, which Cloſe *R.* was incloſed and ſevered by it ſelf, and the Leſſee being in the Houſe, the Leſſor enters into the Cloſe, and makes a Feoffment of the Houſe, and of all the Land demiſed, and makes Livery in the Cloſe (the Leſſee continuing in the Houſe) and afterwards the Leſſee enters into the Cloſe; this is a void Livery, as well for the Cloſe as the Houſe, and the other Lands: For when the Houſe and Land is intirely demiſed, the Houſe is the Principal, and the Land but the Acceſſory, and Poſſeſſion of the Houſe is a good Poſſeſſion of the Land demiſed with it. 2 *Rep.* 31. *b.* 32. *a.* See *Co. Litt.* 48. *a.* *Cro. El.* 142. *pl.* 6.

If diverſe Parcels of Land are contained in the Deed, and the Feoffor delivers Seiſin of one Parcel, according to the Deed, all the other Parcels paſs, tho' he ſaith not in Name of all; becauſe the Deed contains all: So if there are diverſe Feoffees, and Livery is made to one, according to the Deed, it paſſes to all the Feoffees; yet the plainer Way is to ſay, in the Name of Seiſin of the Whole, or of all the Feoffees. *Co. Litt.* 48. *a.* 57. *a.* 9 *Co.* 137, 138. *a.* 2 *Roll. Abr.* 7, 6 *Co.* 26.

If a Man hath ſeveral Cloſes in ſeveral Counties, Livery muſt be made ſeverally. *Litt. ſect.* 61. *Perk.* 227. 2 *Roll. Abr.* 11.

How Seiſin is to be delivered of Land.

**If it be Land, the Feoffor cuts a Turf or Twig, and delivers the Turf or Twig upon the Land to the Feoffee, they both holding the Deed of Feoffment, and the Turf or Twig in their Hands, the Feoffor ſaying theſe Words,** Here I deliver you Seiſin and Poſſeſſion of this Land in the Name of all the Lands and Tenements contained in this Deed, according to the Form and Effect of this Deed. *Ibid.* **Or elſe it may be thus,** viz.

How to be of an Houſe and Land.

**The Feoffor being at the Houſe-Door, or within the Houſe, may ſay,** I here deliver you Seiſin and Poſſeſſion of this Houſe, in the Name of Seiſin and Poſſeſſion of this Houſe and of all the Lands and Tenements in this Deed. *Co. Litt.* 48. *a.*

**Or it may be thus,** (viz.) Here is the Land, enter into it, and take it in Tail, or in Fee: **But a bare Sealing and Delivery of the Deed upon the Land without more ſaying, ſhall not amount to a Livery of Seiſin.** (a) Poph. 49. Co. Litt. 48. b.

A bare Delivery of the Feoffment, upon the Land without Livery, makes but a Tenancy at Will.

(a) If a Man make a Feoffment, and deliver the Deed to the Feoffee upon the Land, but no Seiſin, he may enter into the Land, but ſhall hold it only as Tenant at Will; but if the Deed be delivered in the Name of Seiſin of the Land, it ſhall be good. *Litt. ſect.* 70. *Co. Litt.* 57. *a.*

Who can make and take it.

The Feoffor being abſent cannot make, nor the Feoffee, when abſent, take Livery.

A Leſſee may make Livery as Attorney.

Leſſor makes a Deed of Feoffment, and afterwards makes a Letter of Attorney to the Leſſee, to make Livery, who doth it; this Livery doth not determine the Leſſee's Intereſt in the Land, 1 *Leon.* Caſe 276. *Co. Litt.* 52. *a.* becauſe he doth it as a Servant. *Co. Litt.* 52. *a.*

Diſſeiſee makes a Feoffment, and a Letter of Attorney to make Livery, and good.

A Man is diſſeiſed, and makes a Feoffment, and a Letter of Attorney to enter and take Poſſeſſion, and after to make Livery *ſecundum formam Chartæ*. This is a good Feoffment, tho' the Feoffor be out of Poſſeſſion at the Time of the making of the Charter; for the Authority given by the Letter of Attorney is executory, and nothing paſſed by the Delivery of the Deed * till Livery of Seiſin made. *Co. Litt.* 48. *b.*

Where the ſecond Delivery of the Deed upon the Land is void.

But if a Man be diſſeiſed, and makes a Writing of a Leaſe for Years, and delivers it, and afterwards delivers it upon the Land, the ſecond Delivery, is void; * for the firſt Delivery made it a Deed: And becauſe this Leaſe muſt take Effect by the Delivery of the Deed, therefore the Delivery when he was out of Poſſeſſion, was void †. *Co. Litt.* 48. *b.*

Livery made upon a miſtaken Date, is void.

A Feoffment was dated 10 *Sept.* and the Letter of Attorney was to deliver Seiſin upon a Feoffment bearing Date 11 *Sept.* This is void, there being no ſuch Feoffment dated 11 *Sept.* *Cro. El.* 603. *pl.* 17.

What muſt be done after Livery.

**After the Delivery of Seiſin the Feoffor, or his Attorney, and all the Witneſſes muſt withdraw, and leave the Feoffee in quiet Poſſeſſion, and then there muſt be an Indorſement on the Back of the Deed, to this Effect**, viz.

The Indorſement of Livery, how to be made.

Memorandum, **That the Day and Year above written (or any other Day wherein the Livery is made) Livery of Seiſin was made by the within written** A. B. **(the Feoffor) to the within named** C. D. **(the Feoffee) of all and ſingular the Meſſuages, Lands, and Tenements within mentioned, To have and to hold** (a) **to the ſaid** C. D. **and his Heirs, according to the Form and Effect of the within written Deed.**

Livery muſt paſs a preſent Freehold.

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* But only an Eſtate at Will. *Litt. ſect.* 70.

* The Delivery muſt be on the Land, either by the Party who makes it, or his Attorney.

† But it is not ſo of a Feoffment, for that takes Effect by the Livery. *Co. Litt.* 48. *b.*

(a) By the Rules of Law, Livery muſt paſs a preſent Freehold to ſome Perſon, and cannot expect *in futuro*. *Co. Litt.* 217. *a.* *Hob.* 171.

*Co. Litt.* 48. *b.* 5 *Co.* 94. *Cr. Eliz.* 451. 2 *Co.* 55. 2 *And.* 29. 1 *Roll. Rep.* 261.

When Livery is void, and why.

Great Care muſt be taken of the *Habendum* in the Feoffment; for if the *Habendum* is made to commence at a Time to come, or * *a Die datus*, and Livery is made the Day of the Date of the Feoffment, it is void; for a Freehold cannot commence *in futuro*, but ought to take Effect preſently in Poſſeſſion, Reverſion or Remainder: For if any Freehold ſhould paſs preſently by the Deed, *Habendum* from a Day to come, the Feoffor would have by the Deed a particular Eſtate or Intereſt in the mean Time, without a Donor; which is againſt the Rules of Law. 5 *Rep.* 94. *b. Co. Litt.* 48. *a.*

Where the Deed is void, the Livery is void.

Alſo the Livery is void, becauſe it refers to a Deed, which hath no Effect in Law; therefore it cannot work *ſecundum Formam & Effectum Chartæ.* Co. Litt. 48. b.

So where an Eſtate was granted by the Letters Patent of the Queen: *Habendum a Die confectionis* † was for that Reaſon adjudged to be void. 5 *Rep.* 94. *a.*

Where the Day of the Delivery ſhall be incluſive, and where excluſive.

Where the *Habendum* is from henceforth, or from the Making, the Day of the Delivery ſhall be taken incluſive; but when it is to commence *a Die datus*, the Day is excluded: So it is where it is *a Die confectionis*, there the Day of Delivery is excluded. 5 *Rep.* 1. *a. b.* 94. *a.*

How it is when made by Attorney, not in the Deed.

How the Indorſement to be.

**But if the Livery is made or received by Attorney, and the Warrant or Warrants of Attorney are not in the Deed, (which is the beſt Way,) then in the Indorſement it is neceſſary for the Attorney who delivers or receives to ſay,** That by Virtue of a Letter of Attorney, bearing Date, &c. he received Seiſin, (or he gave Seiſin,) &c. Vide poſtea, **where Livery is made by the Feoffor's Attorney, and received by the Feoffee's Attorney.**

If made by Attorney, it muſt be made in the Life of Feoffor and Feoffee.

**Where Seiſin is delivered by Attorney, it muſt be delivered in the Life-time of both the Feoffor and Feoffee; for if either of them die before Livery is made, the Feoffment is void.** Co. Litt. 52. a. b. Litt. ſect. 66. 2 Roll. Abr. 9. Perk. ſect. 188.

Livery cannot be made or taken in the Abſence of the Feoffor and Feoffee, but only by Warrant of Attorney.

**Neither the Feoffor being abſent can make Livery, nor the Feoffee being abſent can take Livery, but by Warrant of Attorney by Deed, either as the Attornies are Parties to the Deeds, or elſe by a particular Deed made for that (a) Purpoſe. See** Co. Litt. 48. b.

An Attorney can neither make or take it but by Deed.

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* *Habendum a die datus*, the Day of the Date is excluded.

† Becauſe it did not commence till after the Day of the Date, *viz. in futuro.*

(a) An Attorney cannot make Livery for the Feoffor, nor take Livery for the Feoffee without Deed. 2 *Roll. Abr.* 8. *Co. Litt.* 48. *b.* 52. *a.*

How Seiſin is to be delivered.

**Where a Feoffment is made in Fee, and the Feoffor delivers Seiſin for Life, the Feoffee ſhall hold it but for Life; but if Livery is made for Life, and alſo** ſecundum formam Chartæ, **the whole Fee ſhall paſs, becauſe it hath Reference to the** (a) **Deed.** Co. Litt. 222. b.

*Secundum formam Chartæ.*

Livery made upon Condition where there is none in the Deed, it is void.

(a) If a Man makes a Feoffment to another, and in the Deed there is no Condition, but the Feoffor makes Livery by Force of the ſame Deed upon certain Conditions, nothing paſſes; for the Conditions are not compriſed in the Deed. *Litt. ſect.* 359.

So it is in the Caſe of Livery by an Attorney.

So it is if a Man makes a Letter of Attorney to deliver Seiſin upon Condition, and the Attorney delivers it abſolutely, it is void; and ſo it is if the Warrant is abſolute, and he delivers it upon Condition, the Livery is void. *Co. Litt.* 258. *a. b.*

To *A.* for Life, Remainder to the Heirs of his Body, and Livery ſo made is good.

**Alſo when a Feoffment is made to** A. **for Life, Remainder to the Heirs of his Body, and Livery is made to** A. ſecundum formam Chartæ, (b) **this is good.** 2 Roll. Abr. 10.

Livery ſhall be taken moſt ſtrongly againſt the Feoffor.

(b) If a Man makes a Charter of Feoffment in Fee, and makes Livery for Life *ſecundum formam Chartæ*, the Fee ſhall paſs; for it ſhall be taken moſt ſtrongly againſt the Feoffor. *Co. Litt.* 48. *a.*

*Secundum formam Chartæ*, how to be expounded.

*Note*; The Words *ſecundum formam Chartæ*, are to be underſtood according to the Quantity and Quality of the effectual Eſtate contained in the Deed. *Co. Litt.* 48. *a.*

In what Caſes Livery muſt be made.

**Where any Feoffment in Fee-ſimple, Fee-tail, or for a Man's own or other's Life, is made of any corporeal Inheritance, there muſt be Livery of Seiſin.**

It muſt be made to the Leſſee upon a Leaſe for Years, Remainder in Fee or Tail, or Life, before the Entry of the Leſſee for Years.

**Where a Leaſe is made of Lands for Years, Remainder to a Stranger in Fee, Fee-tail, or for Life, there Livery muſt be made to the Leſſee for Years, before he enters** (c) **into the Land, or elſe nothing paſſes to him in the** (d) **Remainder; but the Leaſe is good to the Leſſee.** Moor, **Caſe** 54. Plow. Com. 156. a. **See** Litt. ſect. 60.

(c) If the Leſſee enters before Livery made, then is the Freehold and Reverſion in the Leſſor; but if he makes Livery to the Leſſee before his Entry, then is the Freehold in them in Remainder, according to the Form of the Deed. *Litt. ſect.* 60.

(d) *A.* leaſes to *B.* for Years, Remainder to the right Heirs of *B.* and makes Livery; the Remainder is void, becauſe there is not any *in eſſe*, who can take preſently by the Livery; for every Livery ought to operate preſently: But where a Leaſe is made to *B.* for Life, Remainder to his right Heirs, he hath a Fee executed, and it ſhall not be in Abeyance; for there he takes the Freehold by the Livery. 4 *Leon.* Caſe 67.

In what Manner it muſt be made.

So that it is neceſſary that the Leaſe and Livery ſhould be executed at the ſame Time by the Leſſor himſelf: Or if Livery be to be made by an Attorney after the Leaſe is ſealed, the Livery muſt be made before the Leſſee hath actually * entered; for until actual Entry the Leſſee hath only an *Intereſſe Termini*.

Livery cannot be made to a Leſſee, who hath the Poſſeſſion already.

By the Entry of the Leſſee, he is in the actual Poſſeſſion, and then the Livery cannot be made to him who hath the Poſſeſſion already. But if the Leſſor and Leſſee come upon the Ground on Purpoſe for the Leſſor to make, and the Leſſee to take Livery, there it veſts no actual Poſſeſſion in him till Livery made. *Co. Litt.* 49. *b.*

It muſt be made to a preſent Eſtate.

If a Leaſe for Years be made *Habendum* from *Michaelmas* next, Remainder over in Fee, if the Feoffor makes Livery to the Leſſee, the Remainder is void; becauſe the Leſſee hath no preſent Eſtate, to which the Livery can be annexed. *Moor*, Caſe 54. *Plow. Com.* 156. *a.* But if the Leſſee doth not enter, and the Attorney delivers Seiſin afterwards, and before his Entry, I conceive it will be good.

A Feoffment of an Eſtate to begin at a Day to come is void.

A Feoffment was made, *To hold* to the Feoffee and his Heirs, after the Death of the Feoffor, and Livery was made; yet it was a void Feoffment; † But where a Leſſor made a Leaſe for Lives, and granted the Reverſion to another for Life; (whoſe Eſtate was to begin after the Death of the Survivor of the other Leſſees for Life,) this was adjudged a good Eſtate in Reverſion for Life. *Hob.* 171.

What ſhall conclude the Feoffor to ſay it is not his Deed.

A Feoffment in Fee was inrolled, but no Livery made, and it was held to be no good Feoffment; though the Inrollment ſhall conclude the Perſon to ſay, that it was not his Deed. *Poph.* 6.

**Livery made upon a Deed after it is acknowledged and before it is inrolled, ſhall paſs by the Livery.**

**If a Deed be acknowledged to be inrolled, and before Inrollment Livery is made; this will make it to be a good Feoffment, and not a Bargain and Sale; (a) So where a Man for a valuable Conſideration of Money, makes a Deed and a Letter of Attorney to deliver Seiſin, and before Livery the Deed is inrolled within ſix Months, this ſhall be a good Bargain**

So where a Fine is levied before Inrollment, it ſhall paſs by the Fine.

(a) If a Man for a valuable Conſideration by Deed indented, bargains and ſells Lands to another and his Heirs, and before the Deed is inrolled he levies a Fine, or makes a Feoffment of the ſame Land to the Bargainee and his Heirs; and

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* For when he actually enters, Livery will ſignify nothing, he having as much as Livery can give him, *viz.* the Poſſeſſion.

† For an Eſtate of Freehold in Lands cannot begin at a Day to come. See 2 *Nelſ. Abr.* 846.

and Sale: But if the Livery is made before the Inrollment, the Eſtate ſhall then paſs by the (a) Livery. Poph. 49. 1 And. 113. 4 Co. Hind's Caſe, Mo. 681. 2 And. 3, 162, 203. 4 Leon. 4. Hob. 222.

after and within ſix Months the Deed is inrolled according to the Statute; the Bargainee ſhall be in by the Fine or Feoffment, and not by the Bargain and Sale, for the Eſtate veſted by the Common Law ſhall be preferr'd. 2 *Inſt.* 671, 672.

27 *H.* 8. *cap.* 16. of Inrollments.

How the Eſtate ſhall paſs if there be a Warrant of Attorney in the Deed.

(a) If any Letter of Attorney be in the Deed, or a Covenant to make Livery; there nothing ſhall paſs by the Way of Uſe, *viz.* by Tranſmutation of Poſſeſſion; but according to the Common Law by Tranſmutation of Eſtate only. 2 *Inſt.* 672.

Livery prevents the Operation of Inrollment, as being a more worthy Ceremony to paſs Eſtates by, and therefore ſhall be preferred. 1 *Leon.* 6.

A Feoffment with a Warrant of Attorney made by a Diſſeiſee is good.

If a Man be diſſeiſed, and makes a Deed of Feoffment, and a Letter of Attorney to enter and take Poſſeſſion, and afterwards to make Livery ſecundum formam Chartæ, (b) this is a good Feoffment, though he was out of Poſſeſſion at the Time of the Deed made; becauſe the Feoffment takes Effect by the Livery, and not by the (c) Deed.

The Attorney muſt purſue his Warrant.

(b) In all Caſes the Attorney muſt purſue his Warrant of Attorney, that he hath to deliver Seiſin in Subſtance and Effect. *Co. Litt.* 52. *b.*

Only a Tenancy at Will paſſes till Livery.

(c) Alſo the Authority given by the Letter of Attorney is executory; and nothing will paſs by the Delivery of the Deed, but only an Eſtate at Will, (*Litt. ſect.* 70.) till Livery made. *Co. Litt.* 48. *b.*

Tho' no Time is mentioned in the Warrant for Livery, yet it muſt be in the Life of the Feoffor and Feoffee.

In Letters of Attorney, anciently Power was given to take Poſſeſſion for the Feoffee; and although the Letter of Attorney be indefinite, without Limitation of any Time; yet the Law ſays, it muſt be in the Life of the Feoffor and Feoffee, and upon the Death of either of them, the Deed is void, becauſe nothing paſſes before Livery: For if the Feoffee dies, Livery cannot be made to his Heir, becauſe then he ſhould take by Purchaſe, where Heirs are named by Way of Limitation to take by Diſcent. *Co. Litt.* 52. *b.* 2 *Roll. Abr.* 9. *Perk. ſect.* 188.

Livery cannot make an Eſtate paſs if the Deed be void.

By *Dodderidge* Juſtice, The Act of the Attorney by delivering of Seiſin, cannot make the Eſtate to paſs, if the Fabrick of the Deed is void: But if there be a good Deed of Feoffment with a Letter of Attorney to make Livery, the * Attorney hath his Election to do it when he will. 1 *Roll.*

Where the Attorney hath his Election when to make it.

* *Note*; The Attorney is not tied up to any certain Time.

*Rep.* 130. But *Note*; It muſt be made in the Life of the Feoffor and Feoffee, otherwiſe it will be void.

It muſt be in the Life of the Feoffor.

A Feoffment is made, and a Letter of Attorney to deliver Seiſin by Force of the Deed; yet if Livery be not executed in the Life of him who made the Deed, it is void; for the Feoffee hath nothing in the Land according to the Purport of the Deed, he being only Tenant at Will till Livery made; and if there is no Livery, then after the Death of him who made the Deed the Right of thoſe Lands is in his Heirs. *Litt. ſect.* 66.

A ſecond Delivery of a Leaſe to re-continue the Poſſeſſion is void.

The firſt Delivery made it a Deed.

Where a Man is diſſeiſed and makes a Leaſe for Years, and delivers the Deed off from the Land, and afterwards delivers it upon the Land, this ſecond Delivery is void; for the firſt made it a Deed. Co. Litt. 48. b.

Livery to one upon a Feoffment to two is good.

If a Man makes a Feoffment by Deed to B. and C. and their Heirs, and makes Livery to B. in the Abſence of C. in the Name of both, and to their Heirs, this Livery is good to both. Co. Litt. 49. b. But before the Statute of Frauds and Perjuries, if the Feoffment had been made without Deed, it would have operated to B. only. Co. Litt. 49. b. 359. 2 Vent. 202, 205. 5 Co. 95. 2 Roll. Abr. 9. 2 Leon. 23.

In what Feoffments a Letter of Attorney may be contained.

The Attorney muſt be Party to the Deed.

In a Deed of Feoffment beginning Omnibus Chriſti fidelibus, or Sciant præſentes & futuri quod ego, &c. or To all Chriſtian People, *&c.* a Letter of Attorney may be contained: But if it be by Indenture between the Feoffor of the one Part, and the Feoffee of the other Part, there a Letter of Attorney in ſuch Deed is not good, unleſs the Attorney is made Party to the (a) Deed. Co. Litt. 56. b.

(a) But in *Cro. Eliz.* 905. *pl.* 10. 2 *Roll. Abr.* 8. it is good, though not a Party, being a common Aſſurance.

How the Indentures muſt be where there is a Warrant or Warrants of Attorney to make or take Livery.

If in the Indenture there is a Warrant or Warrants to an Attorney, or Attornies, to make Livery, the Deed muſt be Tripartite, according to the old Way, between the Feoffor of the firſt Part, the Feoffee of the ſecond Part, and the Attorney or Attornies of the third Part: But if there are Attorney or Attornies, as well to make as to take Livery, then the Indenture ought to be Quadripartite, between the Feoffor of the firſt Part, the Feoffee of the ſecond Part, the Attorney or Attornies to make Livery of the third Part, and the Attorney or Attornies to take the Livery of the fourth Part.

## *The Form of a Warrant of Attorney in an Indenture is as follows:*

The Form of a Warrant of Attorney in a Deed.

AND the ſaid A. B. (the Feoffor) hath nominated, conſtituted and appointed, and by theſe Preſents doth nominate, conſtitute and appoint the ſaid C. D. (viz.) (his Attorney, who muſt be Party to the Deed,) his true and lawful Attorney, for him and in his Name and ſtead, to enter into and take full and peaceable Poſſeſſion and Seiſin of all and ſingular the above-mentioned Meſſuages, Lands, Tenements, Hereditaments and Premiſſes, or ſome Part thereof in the Name of the Whole, and then to deliver full, quiet and peaceable Poſſeſſion and Seiſin of all and ſingular the Premiſſes, or of ſome Part thereof, in the Name of the Whole, unto the ſaid E. F. (the Feoffee,) or (if the Caſe is ſo,) to the ſaid G. H. (his Attorney,) in that Behalf lawfully authorized, or to either of them, according to the Form, Effect, and true Meaning of theſe Preſents. And the ſaid E. F. (the Feoffee) hath nominated, conſtituted and appointed, and doth by theſe Preſents nominate, conſtitute and appoint the ſaid G. H. his true and lawful Attorney, (who muſt be Party to the Deed,) for him and in his Name and ſtead, to receive and take of and from the ſaid A. B. or the ſaid C. D. or either of them, Poſſeſſion and Seiſin of all and ſingular the Premiſſes, or of ſome Part thereof in the Name of the Whole; and ſuch Poſſeſſion and Seiſin thereof ſo taken, to hold and to keep to the Uſe of the ſaid E. F. his Heirs and Aſſigns, according to the Effect and true Intent and Meaning of theſe Preſents. In Witneſs, &c.

Attorney to take Livery and Seiſin.

## *The* Memorandum *of Livery to be indorſed on the Deed, is thus:*

The Indorſement of Livery on the Deed.

MEmorandum, That the Day and Year within written (or on ſuch other Day whereon the Livery is made) full and peaceable Poſſeſſion and (a) Seiſin was had and taken by the within named C. D. (the

Feoffor's

Leſſee for Years muſt out of Poſſeſſion, when Livery is made.

(a) If a Reverſioner makes a Feoffment and Livery, without putting out the

Feoffor's Attorney) of and in a Parcel of Land called the Holt, being Part of the Lands within granted, for and in the Name of all the Lands, Tenements and Hereditaments mentioned to be within granted, and was in the Name of the within mentioned A. B. (the Feoffor) delivered by the ſaid C. D. (his Attorney) to the within named G. H. Attorney for the within named E. F. (the Feoffee.)

the Leſſee for Years in Poſſeſſion, this is void. 2 *Roll. Abr.* 4.

So in other Cases.

So it is where there is a Leſſee for Life. *Ibid.*

So it is alſo where a Feme Covert continues Poſſeſſion. *Ibid.* and *Dy.* 340. *a.*

Where a Reverſioner makes Livery, how to be.

If a Reverſioner makes a Feoffment and Livery, the Wife of the Leſſee continuing in Poſſeſſion, it is void. *Ibid.*

How it ſhall be where Leſſee for Years leaſes out Parcel.

Where Leſſee for Years leaſes Parcel for a certain Term, and the Leſſor makes a Feoffment, and Livery in this Parcel, which is in the Poſſeſſion of the ſecond Leſſee, putting him out of Poſſeſſion, this is a good Livery though the Leſſee was in the Poſſeſſion of the Reſidue; for by this Leaſe the Leſſee hath divided the Poſſeſſion of this Reſidue. 2 *Rep.* 32. *a.* 2 *Roll. Abr.* 4. *Dyer* 18. *b.*

Indorſements of Livery have always been favourably expounded.

*Per North* Chief Juſtice, 2 *Mod. Rep.* 79. Whatever the antient Opinions were about purſuing of Authorities with great Exactneſs and Nicety; yet this Matter of Indorſements of Livery upon Writings, hath been always favourably expounded of later Times, unleſs where it plainly appeared that the Authority was not purſued at all.

A Feoffment made to *A. B.* Knight, who is not, and yet good, and why.

A Feoffment is made to J. S. Knight, who is no Knight, and yet it is good, becauſe the Eſtate paſſes by the Livery. 2 Roll. Abr. 3.

To *William Porter*, by the Name of *William Jones*, and good.

A Feoffment is made to William Porter, by the Name of William Jones, and yet held good. 2 Roll. Abr. 3.

So to *Julian*, by the Name of *Gill*.

So to Julian by the Name of Gill, and (a) good. Ibid.

So of the Manor of *Sarret*, by the Name of *Serroit*, why good.

(a) If a Manor is known by the Name of *Sarret*; and he who is ſeiſed of the Manor makes a Feoffment by the Name of *Serroit*, and delivers Seiſin *ſecundum formam Chartæ*, the Manor paſſes by this; for the making Livery *ſecundum formam Chartæ*, refers to the Eſtate, and not to the Manor. 2 *Roll. Abr.* 2.

Feoffment and Livery within the View, how to be.

If a Man makes a Charter of Feoffment, and makes Livery within the View, and the Feoffee dares not enter for fear of Death, but he claims it, this is a good Execution of the Livery, and ſhall veſt the Freehold in him. Co. Litt. 48. b. 2 Roll. Abr. 3.

How to be where a Statute-Merchant is extended, and a Feoffment made by the Reverſioner.

**Where a Statute-Merchant is extended, if a Feoffment and Livery is made by the Reverſioner, the Tenant by the Statute continuing in Poſſeſſion, this is** (a) **void.** 2 Roll. Abr. 3.

Adminiſtrator extends a Statute and hath a *Liberate*, but before Entry aſſigns, this is void.

(a) An Adminiſtrator ſues an Extent and a *Liberate* upon a Statute, and before Entry or Recovery of Poſſeſſion he aſſigns his Intereſt, this Aſſignment before Entry or Poſſeſſion is void; for the Owner of the Land continuing in Poſſeſſion, turns the Poſſeſſion the Adminiſtrator had accepted by the *Liberate* to a Right, which is not aſſignable before Poſſeſſion is regained by Re-entry or Ejectment. 3 *Lev.* 312. 4 *Mod.* 48. 1 *Show.* 290. 2 *Salk.* 563.

By the Grant of the Profits of the Land with Livery, the Soil paſſes.

**A Man grants the Profits of his Lands, and makes Livery** ſecundum formam Chartæ, **the Soil paſſes.** Co. Litt. 4. b. 2 Roll. Abr. 2.

Feoffment by a Man *Non compos*, where void, and where not.

**A Man of non-ſane Memory, makes a Feoffment and Livery, this is not** (b) **void.** 2 Roll. Abr. 2.

(b) But if Livery is made by Attorney, it is void. 2 *Roll. Abr.* 2.

For Covenants upon Feoffments, And how pleaded.

**For all Manner of Covenants in Feoffments, ſee in Title** Covenants. **And how a Feoffment is pleaded, and the Uſes thereof,** vide 3 Salk. 165.

# Fines.

Fines, *quid.*

FINIS (a) dicitur finalis Concordia quia finem litibus imponit. *Co. Litt.* 262. *a. Litt.* 441.

(a) Fines are of that Antiquity, that they were frequent before the Conqueſt. 2 *Inſt.* 511.

The Antiquity of Fines.

A Fine is good, and is a Diſcontinuance, tho' the Proclamations are reverſed.

A Fine remains good tho' the Proclamations are reverſed, and ſhall be a Diſcontinuance. *Plow. Com.* 265. *a. b.* 266. *a.* Fines that are void will make a Diſcontinuance. *Lucas* 245.

How pleaded.

The Pleading of a Fine is not *quidam J. S. levavit finem*, but *quidam finis ſe levavit*, *&c.* without alledging of any Seiſin. 2 *Inſt.* 511.

May be taken by Commiſſion.

Fines originally could not be levied but in Court: Now by the Statute of *Carliſle*, 15 *E.* 2. they may be taken before Commiſſioners. 2 *Inſt.* 512.

Fines are executory or excepted.

There are two Sorts of Fines in general, one Executory, the other executed. 2 *Inſt.* 513. *Co. Reading* 4.

Fines executed.

Executed, is that where the preſent Eſtate paſſeth unto, or is ſuppoſed in the Conuſee; for ſuch a Fine is a Feoffment upon Record *, as a Fine *come ceo*, *&c.* or *ſur* Releaſe, or Confirmation, or *ſur* Render. 2 *Inſt.* 513.

* *Vide* where the Court denied a Fine to be a Feoffment of Record, *Salk.* 340. 1 *Williams* 519.

Fines executory, as *ſur* Grant and Render.

Executory, as when no Eſtate is veſted in the Conuſee, until it be executed by Entry or Action; as Fines *ſur* Grant and Render by the Conuſee, which muſt be made upon a Fine *come ceo*, or other Fine which is executed; otherwiſe the Conuſee could not make any Grant or Render of the Land. 2 *Inſt.* 513.

The Render muſt be out of the ſame Land to one of the Conuſors, not to a Stranger.

Where a Fine is levied *ſur* Grant and Render, the Render muſt be out of the ſame Land; And if two levy a Fine, the Render may be to one. 2 *Inſt.* 514. But it cannot be to a Stranger. *Ibid.*

The divers Kinds of Fines, and how made uſe of.

Of Fines, there are four particular Kinds, *viz.* A *Fine ſur Conuſance de Droit come ceo*, *&c.* which is the principal and ſureſt Kind of Fine, it giving preſent Poſſeſſion to the Conuſee without

without Writ of Execution. *A Fine ſur Done Grant and Render*, or double Fine, wherein the Conuſee after a Releaſe and Warranty to him by the Conuſor, Grants and Renders back the Lands, *&c.* *A Fine ſur Conuſance de Droit Tantum*, which is Executory, and commonly uſed to paſs a Reverſion. *A Fine ſur Conceſſit*, made uſe of to grant away Eſtates for Life, or Years. 2 *Inſt.* 513. *Plowd.* 268. 3 *Rep.* 19. 5 *Rep.* 38.

**To limit Remainders, paſs Reverſions, &c.**

A Fine *ſur Conuſance de droit*, levied by a particular Tenant makes a Forfeiture; but a Fine *ſur Conceſſit* is more innocent, and is like to a Grant of *totum ſtatum*, *&c.* *Jones* Ch. J. 69.

**A Fine *ſur Conuſance* by a particular Tenant is a Forfeiture, but not *ſur Conceſſit*.**

A Fine was levied to *B.* and *C.* and to the Heirs of *B.* who render this to *E.* and *F.* who are no Parties to the Writ, nor *Conuſans*, and the Heirs of the Body of *E.* Altho' it appears that *E.* and *F.* were not Parties to the Fine, yet the Grant and Render is not void, but voidable. * 3 *Rep.* 5. *a.*

**Render to a Stranger, not void, but voidable.**

*** By Error.**

The Contents in the Render are of the ſame Condition, Quality and Conſtruction, as Conveyances, and require not ſo preciſe Form as a Writ.

**What is contained in the Render of a Fine, ſhall be of the ſame Condition, Quality and Conſtruction, as another Conveyance between Party and Party, and need not have ſuch preciſe Form, as a Writ or Judgment.** 5 Rep. 18. b.

Where Lands ariſing on the Part of the Mother may go to the Heirs on the Part of the Father, &c.

By Fine, Grant and Render.

Which makes the Conuſor a new Purchaſer.

**A Man ſeiſed in Fee, as Heir of the Part of the Mother, he and his Wife levied a Fine to** A. **and** B. **with Warranty; who by the ſame Fine did grant and render the Lands to the Husband and Wife in Tail, Remainder to the Right Heirs of the Husband; and he and his Wife died without Iſſue: It was inſiſted, that nothing was altered by this Fine, but the Uſe and Eſtate remain'd as** (a) **before; ſo that the Heir on the Part of the Mother ſhould take: But the Court held, that the Eſtate was once in the Conuſee; and that the Render back makes the Conuſor a new Purchaſor.** 1 Salk. Rep. 337. **Reſolved** contra 2 Salk. 590. See Hob. 31. **but denied to be Law.** 2 Williams 139. 3 Lev. 406. Salk. 591.

(a) Adjudged in *C. B.* that a Fine and Recovery to the Uſe of Right Heirs, *&c.* did not create a new Eſtate; but the Heir *a parte materna* ſhould have it, being the ancient Uſe, and not the Heirs general of the Conuſor. 2 *Salk.* 590. 2 *Williams* 139.

**But it has been otherwiſe adjudg'd.**

Five Parts in a Fine.

**There are five Parts in a Fine.**

1. The Original, *i. e.* Writ of Covenant.

**I. The original Writ; and upon every Writ by which Land is demanded, or by which it is to be charged, or which in any Sort concerns the Land, a Fine may be levied.** 5 Rep. 38. b. 39. a. 2 Inſt. 514.

II. There

2. The *Licentia Concordandi*, called the King's Silver.

II. There ought to be a Licentia concordandi, for which there is a Fine due to the King, being Part of the ancient Revenue of the Crown, which is called the King's Silver. 5 Rep. 32. a. 2 Inſt. 511. The Entry whereof is as follows:

1. The King's Silver is entered upon the Writ of Covenant.
2. The Party who pays it is he in whom the Freehold is veſted.
3. The Plea, and between whom.
4. The Land for which the Fine is paid.

3. The Concord, which is the Subſtance of the Fine.

III. The Concord which commences thus, * Et eſt Concordia talis, &c. This is the Foundation and Subſtance of the Fien; for if upon this the King's Silver is entered, (a) although the Conuſor dies afterwards, the Fine is good. 5 Rep. 39. a. 2 Inſt. 511. Dyer 220. 3 Mod. 140.

* But now to be in *Engliſh* by the Statute 4 *Geo.* 2.

After a Fine is recorded, no Feme Covert ſhall aver ſhe was not examined.

(a) 2 *Inſt.* 511. After a Fine is received and recorded, no Feme Covert, nor her Heirs, ſhall be received to aver, that ſhe was not examined nor aſſented. 2 *Inſt.* 515.

4 The Note of the Fine.

IV. The Note of the Fine, and this is only an Abſtract out of the Original (b) and the Concord. 5 Rep. 39. a.

(b) They muſt be levied by original Writ. 2 *Inſt.* 513.

5. The Foot of the Fine.

V. The Foot of the Fine, which commences, * Hæc eſt finalis concordia. 5 Rep. 39. a.

* But now to be in *Engliſh* by the Statute 4 *Geo.* 2.

Conuſee of a Reverſion muſt ſue out a *Quid juris clamat* againſt the Leſſee.

If a Fine is levied of a Reverſion, the Conuſee preſently after the Conuſance, ought to ſue out a Quid juris clamat againſt the Leſſee. (c) 5 Rep. 39. b.

In Caſe of a Conveyance at the Common Law, on a Fine levied by him in Reverſion or Remainder.

(c) This is in Caſe of a Conveyance at the Common Law, where the Fine is levied of a Reverſion or Remainder. But where the Statute of Uſes brings the Uſe into Poſſeſſion, the *Ceſtui que Uſe* ſhall diſtrain without Attornment; and have the like Advantage as if the Conuſee's Poſſeſſion had been perfected by Attornment. *Vaugh.* 50.

A Reverſion may be granted by Bargain and Sale inrolled, Leaſe and Releaſe, and Fine.

A Reverſion of an Eſtate of Inheritance may be granted by Bargain and Sale, for Money, inrolled, or by Releaſe, and Fine, as the Caſe is. See for ſuch a Conveyance, *Bridg. Conv.* 237, 238. *Dyer* 309. 2 *Inſt.* 671. 2 *Co.* 24. and in Title *Leaſe and Releaſe.*

Before the Statute of Non-claim, if he who had Right to Lands paſſed by Fine, had not claimed within a Year and a Day, he was barred for ever.

Before the Statute of Non-claim, made 34 Edw. 3. If a Fine was levied of Lands, and a Stranger who had

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had a Right to recover theſe Lands (if he were not out of the Realm at the Time of the Fine levied) did not make his Claim (a) thereof within a Year and a Day next after the Fine levied, he ſhould be barred for ever. Litt. ſect. 441.

Where a Stranger may enter in the Name of him who has Right.

(a) Where a Man hath Right to enter into any Lands, † any Stranger, in the Name or to the Uſe of the Man whoſe Right it is, may enter into the Lands; and this regularly ſhall veſt them in him without any Commandment precedent, or Agreement ſubſequent. *Co. Litt.* 258. *a.* 9 *Rep.* 106. *a.* *Cro. El.* 561. *pl.* 19. *Moor* 450. *Co. Litt.* 407. *a.* 245. *a.*

† This will not do in Caſe of a Fine.

But if a Diſſeiſor levies a Fine with Proclamations according to the Statute, a Stranger without a Commandment precedent or an Agreement ſubſequent, within five Years, cannot enter in the Name of the Diſſeiſee, to avoid the Fine. *Co. Litt.* 358. *a.* 9 *Rep.* 106. *a.* *Poph.* 108. *Co. Litt.* 245.

4 & 5 *Annæ*, No Claim or Entry to avoid a Fine ſhall be ſufficient Claim, unleſs upon ſuch Entry or Claim an Action is commenced within a Year after.

By the Statute of 4 & 5 *Annæ* no Claim or Entry to be made into any Lands, &c. ſhall be of any Force to avoid a Fine levied, with Proclamations, according to the Form of the Statute in the Court of Common Pleas at *Weſtminſter*, or in the Courts of Seſſions in any of the County Palatines, or Grand Seſſions in *Wales*, of any Lands, Tenements, or Hereditaments; or ſhall be a ſufficient Claim within the Statute for Limitation of Actions, and avoiding of Suits in Law, unleſs upon ſuch Entry or Claim an Action be commenced within one Year after making of the Entry or Claim.

A Fine levied, without expreſſing to whoſe Uſe, is to the Conuſor's Uſe.

A Fine levied without any Conſideration or Uſe expreſt, is to the Conuſor's and his Heirs Uſe. Vaugh. 43. Vide Downham's Caſe, 9 Rep. 8. b. 11. a. See Title Recovery.

Conuſee of a Fine of a Reverſion to Uſes ſhall have the ſame Advantages as if his Poſſeſſion was perfected by Attornment.

A Fine levied of a Reverſion of Lands to Uſes: Becauſe the Uſe and Poſſeſſion by the Statute comes inſtantly together, and the Conuſee hath no poſſible Time to bring a Quid juris clamat, or Quem redditum reddit, to receive an Attornment to perfect his Poſſeſſion: It was reſolved, that Ceſtuy que Uſe ſhould have the ſame Advantage, as if the Conuſee's Poſſeſſion had been perfected by Attornment (b) and Seiſin. Vaugh. 50. 6 Rep. 68. a.

(b) Attornment is now taken away by Statute 4 & 5 *Annæ*.

A Fine by one not actually ſeiſed of the Entail, will not bar a Siſter, tho' it will his Iſſue.

A Fine by one who is not actually ſeiſed of the Entail, (c) will not bar a Siſter, tho' it would bar his Iſſue. Cro. Car. 434, 435. pl. 4.

He who dies *ſans* Iſſue, before the Eſtate deſcends to him, need not be mentioned in a *Formedon* by a Siſter, but muſt by the Iſſue.

(c) Dying without Iſſue before the Eſtate deſcended to him, there need not to be any Mention made of him pl. 4. Cr. Eliz. 611. For where he need not be mentioned in the Conveyance of the Deſcent, there his Fine ſhall never bar. Ibid.

It is not neceſſary that the collateral Iſſue claiming by an Entail, ſhould mention every collateral Iſſue inheritable before him, as the lineal Anceſtor muſt. Hob. 332.

None but he to whom the Land is intailed can diſcontinue the Reverſion, or Remainder.

No Man can diſcontinue the Reverſion or Remainder, but he only to whom the Land is intailed. Seymour's Caſe, 10 Rep. 97. a. A Diſcontinuance doth not bind the Right, but prevents the Entry. Raym. 454. 2 Inſt. 336.

him in a *Formedon* by a Siſter; but there muſt by an Iſſue. *Cro. Car.* 434, 435. *pl.* 4. *Hob.* 332, 333. *Jones W.* 30, 60, 61, 62.

Fine levied by the Remainder in Tail, in the Life of Tenant in Tail, will bar his Iſſue during Iſſue of Tenant in Tail.

Tenant in Tail, Remainder in Tail; he in Remainder in Tail levies a Fine in the Life of the Tenant in Tail, to the Uſe of *J. S.* This ſhall bar his Iſſue ſo long as Tenant in Tail ſhall have Iſſue* living. *Carter* 168, 202. *Vide Law of Entails* 76, 78. 9 *Rep.* 141.

Fine levied by Remainder in Tail who was not ſeiſed, will not bar another Remainder

But where the Mother is Tenant in Tail, Remainder to *B.* her Son in Tail, Remainder to *C.* her Son in Tail; *B.* in his Mother's Life-time, levies a Fine and dies *ſans* Iſſue, this Fine ſhall not bind, becauſe *B.* who levied the Fine, was never ſeiſed by Force of the Entail. *Cro. Car.* 434. *pl.* 4. *Hob.* 332, 333.

Baron and Feme Tenants in ſpecial Tail. The Baron may bar the Eſtate-tail.

Baron and Feme are Tenants in Special Tail: The Baron levies a Fine and dies, the Eſtate-tail is barred, and not diſſolved or determined, but hath Continuance ſo long as the Wife lives, as to her ſelf, and the † Heirs in Tail, in Remainder. 9 Rep. from 138. to 141. a. Keilw. 205. Dyer 251. 2 Inſt. 681. 8 Co. 72. Hob. 257. 2 Bendl. 50. Moor 28. Cr. Cha. 477.

Yet Feme has an Eſtate, and cannot bar it.

And altho' the Feme hath an Eſtate-tail, yet ſhe cannot levy a Fine, or ſuffer a Recovery, becauſe ſhe cannot bar that which was barred before, by the Priority of the Act of her Husband. 9 Rep. 142. b. See Hob. 257, 259.

Fine by Feme Covert bars her and her Heirs, if not avoided by the Husband's Entry.

A Feme Covert levies a Fine ſolely, this ſhall bind her and her Heirs, if the Husband doth not enter and avoid it. 10 Rep. 43. a. 1 Roll. Abr. 346. Letter N. Noy 50. 3 Rep. 8. a. b. Hob. 225. 7 Co. 8. Co. Litt. 46. Bro. Tit. Fine 79. Co. Reading 9.

A Fine will not amount unto an Entry, as a Feoffment does.

Tho' a Fine is a Feoffment of Record, * yet it is but fictione juris. (a) If another were in by Tort, it will not amount to an Entry,

Fine by Tenant in Tail is a Diſcontinuance to him in Reverſion or Remainder.

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* The Iſſue of him who levied the Fine.

† Which are not the Iſſue of the Baron, for they are all barred.

* *Vide* where a Fine is denied to be a Feoffment of Record, *Salk.* 340. 1 *Williams* 519.

(a) But a Fine levied by Tenant in Tail, ſhall be a Diſcontinuance to him in Reverſion or Remainder. Sey-

Entry, as a Feoffment will. Carter 176, 209.

*Seymour*'s Caſe. 10 *Rep.* 96. *b.*

Bargain and Sale and Fine by Tenant in Tail is no Diſcontinuance.

A Bargain and Sale by Tenant in Tail, and Fine upon it, is no Diſcontinuance, but it ſhall bind the Eſtate ſo long as he hath Iſſue in Tail living. 10 *Rep.* 96. *b.* *Seymour*'s Caſe. 1 *Bulſt.* 162.

Where a Fine turns not an Eſtate to a Right, there needs no Claim.

A Fine doth not bar the Eſtate, but binds the Right; (a) and where the Fine doth not turn the Eſtate to a Right, there needs no Claim. Raym. 149. 9 Rep. 106. 2 Inſt. 517. Cr. Ja. 60. 5 Co, 124. 1 Vent. 81.

A Fine bars not a future Right.

(a) No Fine bars any Eſtate which is not deveſted, and put to a Right; and he that at the Time of the Fine levied had not any Title to enter, ſhall not be barred by the Fine. *Raym.* 149. 9 *Rep.* 106. *b.* This is in Caſe of a future Intereſt, not in Caſe of Tenant in Tail, barring his Iſſue. *Per Stat.* 32 *H.* 8. *a.*

A Fine bars not any Eſtate *in futuro.*

No Fine bars any Eſtate in futuro: For if a Man (b) hath a future Intereſt, and the Leſſor is diſſeiſed, and the Diſſeiſor levies a Fine, the future Intereſt is not touched; and becauſe it is not turned to a Right, he is not bound to claim. Ray. 149.

If Tenant in Tail levies a Fine, and dies *ſans* Iſſue, he in Remainder muſt enter within the five Years.

(b) Tenant in Tail, Remainder in Tail: Tenant in Tail levies a Fine and dies without Iſſue; he in Remainder in Tail is bound to enter within five Years after Death of the Tenant in Tail, elſe he is barr'd. *Raym.* 151.

If Tenant in Tail bargains and ſells in Fee, and after Inrollment levies a Fine to Bargainee, it is no Diſcontinuance of the Remainder.

But it is a Bar to his Eſtate-tail.

If the Fine is levied before the Bargain and Sale inrolled, it is a Diſcontinuance.

If Lands are given to *A.* and the Heirs Male of his Body, Remainder to *B.* and the Heirs Male of his Body, the Remainder to the right Heirs of *A.* and *A.* doth bargain and ſell this Land by Deed indented and inrolled to *J. S.* and his Heirs: And after levies a Fine of it *ſur conuzance de droit come ceo*, &c. to him and his Heirs; by this the Remainder to *B.* is not diſcontinued, but it is a Bar to the Eſtate-tail by the Statutes, and cauſeth the Eſtate of the Bargainee to laſt ſo long, as the Tenant in Tail hath Iſſue of his Body: But if the Fine had been levied before the Bargain and Sale, it had been a Diſcontinuance of the Remainder; but in neither Caſe a Bar to him in Remainder, unleſs he ſuffer himſelf to be barred by his Non-claim within five Years after his Remainder happens to come in Poſſeſſion. 10 *Co.* 96. *Seymour*'s Caſe. 1 *Bulſt.* 162.

If one enters before Deviſee and dies ſeiſed, this Deſcent ſhall not take away the Entry.

Where one after a Deviſe enters, (before the Deviſee enters) and dies ſeiſed, this Deſcent ſhall not take away the Entry of the Deviſee.

So where a Deviſe is to J. S. and a Stranger enters and levies a Fine, and the five Years paſs before

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Nor a Fine levied, and if five Years paſs before Deviſee enter, it ſhall not hurt him.

**the Entry of J. S. becauſe he claims as Deviſee, and the Fine was levied before his Entry, ſo that his Eſtate was never turned to a Right, (a) this Fine ſhall never hurt him.** Carter 32. Cro. Car. 200, 201. pl. 2.

(a) So alſo in the Caſe of a Leaſe to commence *in futuro*, and before any Entry; for until Entry the Leſſee hath only a future Intereſt, which cannot be touched. *Carter* 187, 188. *Vide* 5 *Co.* 124. *Cr. Ja.* 60. 9 *Co.* 105.

But if the Party doth not enter within the five Years after the Term commences, he ſhall be barred by the Fine. 1 *Sid.* 460. *Raym.* 149.

A Fine by Tenant in Tail bars his Iſſue.

**Tenant in Tail levies a Fine; this ſhall bar all his (b) Iſſue.** Carter 209.

Fine by the Huſband, Tenant in ſpecial Tail, binds the Iſſue, tho' the Mother ſurvive.

**The Fine of the Huſband, Tenant in ſpecial Tail, ſhall bind the Iſſue, tho' the Mother ſurvives.** Hob. 333. Dyer 351. See before.

Tho' he is but Tenant in Tail in Remainder, his Fine bars his Iſſue.

(a) Tho' he is but Tenant in Tail in Remainder, it ſhall bar all his Iſſue. *Carter* 168, 202. 3 *Rep.* 50. *Hob.* 258.

Deviſe to one when he attains the Age of twenty-five.

Who at Age before twenty-five levies a Fine, it ſhall bar his Iſſue.

But where Lands are deviſed to a Man in Tail, when he attains the Age of twenty-five Years; he, after he comes of Age, and before twenty-five, levies a Fine, and hath Iſſue, and dies after twenty-five: This Fine ſhall bar the Iſſue; for altho' he was not Tenant in Tail at the Levying of the Fine, yet he having attained that Age, he was the Perſon to whom the Land was intended, and ſo within the Words and Intent of the Statute. *Cro. Car.* 434, 435. *pl.* 4. *Cr. Eliz.* 611.

Tenant in Fee makes a Leaſe for Years, in Truſt for himſelf, and continues the Poſſeſſion, and afterwards makes a Leaſe for forty Years, and levies a Fine, and five Years paſs without Entry of the Leſſee; now he in Reverſion continuing the Poſſeſſion after the Leaſe for Years, made him Tenant at Will to the firſt Leſſee; and then the letting of it for forty Years, made him not a Diſſeiſor, but at the Election of the * Party. 1 *Sid.* 458. *Noy* 123. 1 *Vent.* 81.

* Had it been for Life, it had been a Diſſeiſin.

*Note*; Every ſuch Truſt implies that the Leſſor ſhall take the Profits. 1 *Sid.* 337, 458. 2 *Ventr.* 329.

The Poſſeſſion of Tenant at Will is the Poſſeſſion of him in the Remainder, and preſerves the Eſtate without any Wrong done to it, or turning it to a Right. *Raym.* 148. 1 *Inſt.* 270. *Carter* 176.

4 *H.* 7. *cap.* 24.

**The Statute** Anno 4 H. 7. c. 24. **which provides how often a Fine, levied in the Common Pleas, ſhall be read and proclaimed, and who then ſhall be bound thereby, is as followeth,**

The Preamble of the Act.

Item, **Where it was ordained in the Time of King** Ed. I. **by the Statute** de finibus, **that Notes and Fines to be levied in the King's Courts, before his Juſtices, ſhould be openly and ſolemnly read, and that the Pleas in the mean Time ſhould ceaſe, and this to be done by two Days in the Week, after the Diſcretion of the Juſtices, as in the ſaid Statute more plainly appeareth.**

The Preamble of this Act extends only to Lands in Fee, not to Lands intailed.

The Preamble of this Act cannot be extended to Fines of intailed Lands, of which they could be no Bar, neither at the making of the Statute of Non-Claim, nor after: But to Fines levied of Lands in Fee-ſimple. *Per Jones* Chief Juſtice, in his Argument in the Exchequer Chamber, 241.

That there was nothing more than extrajudicial Opinions, that the Statute of 4 *H.* 7. bound Eſtates-tail, till after the Statute of 32 *H.* 8. and then what Opinions or Reſolutions, judicial or extrajudicial, have been given for the Subjection of Entails to Fines, with Proclamations, are well juſtifiable by 32 *H.* 8. tho' 4 *H.* 7. had never been made. *Jones* 242. He agrees that *Coke* and *Hobart* were of Opinion, that the 4 *H.* 7. did not bind Entails, 243. Yet he declared that he could not venture to give his Opinion, that the 4 *H.* 7. did not bar Entails, 245. *Vide Bro.* Tit. *Fines* 1. *Hob.* 332. *Dyer* 3. And the Reaſon of the Doubt upon this Head, and the Opinions *Pro* and *Con. Co. Litt.* 372. 2 *Inſt.* 516, 517. *Moor* 250. 1 *And.* 170. *Plowd.* 373. 1 *Jo.* 39. 19 *H.* 8. 6. *pl.* 5. 1 *And.* 46. *pl.* 118. *Raym.* 271, 287, 321, 345 to 349. 2 *Jones* 238.

**The King our Sovereign Lord conſidereth, that Fines ought to be of the greateſt Strength** (a) **to avoid Strifes and Debates, and to be a final End and Concluſion, and of ſuch Effect, were taken afore the Statute made of Non-Claim;** (b) **and now is uſed the contrary, to the univerſal Trouble of the King's Subjects,**

(b) 34 *Ed.* 3. *cap.* 16.

Fines levied by Leſſee for Years, or at Will, or Copyholders, not within this Statute.

(a) The Makers of this Act, never intended that a Fine levied by the Fraud and Practice of a Leſſee for Years, Tenant at Will, or Copyholder, who pretend no Title to the Inheritance, but the Diſinheriſon of their Leſſors and Lords, ſhould bar them of their Inheritance: For the Statute ſays, that Fines ſhould be of the greateſt Strength to avoid Strifes and Debates, but this evil Practice will not avoid Strifes and Debates. 3 *Rep.* 77. *b.*

Nor other who could not levy Fines.

(b) Alſo it was never intended, that thoſe who could not levy Fines, ſhould by making of an Eſtate, by Fraud and Tort, be enabled by this Statute, to bar thoſe who have Right by the Levying of a Fine. 3 *Rep.* 77. *b.*

Where Leſſee for Years levies a Fine, Leſſor ſhall have 5 Years after the Term.

So where Leſſee for Years made a Feoffment and levied a Fine, the Leſſor ſhall have five Years after the Term ended, to make his Claim and enter. 1 *Ventr.* 241, 242. 3 *Keb.* 37. 110. *Raym.* 219. *Mo.* 71. *Cr. Eliz.* 254. 3 *Co.* 78. *Cr. Car.* 157.

If Tenant for Life and firſt Remainder in Tail levy a Fine, it is no Diſcontinuance, nor deveſting ſecond Remainder in Tail.

But where there is Tenant for Life, Remainder in Tail, Remainder in Tail; Tenant for Life, and he in the firſt Remainder in Tail levy a Fine to *J. S.* in Fee, who renders therein 30*l. per Annum* to the Tenant for Life.

Then he in the firſt Remainder in Tail dies without Iſſue, and he in the ſecond Remainder in Tail enters, and the Tenant for Life diſtrains; and held that he might; for this Fine is no Diſcontinuance of the firſt or ſecond Remainder; becauſe each Party gave but what he legally might. This ſhall be conſtrued to be the Grant of the Tenant in Tail firſt, and the Grant of the Tenant for Life afterwards, to prevent a Forfeiture. 1 *Rep.* 76, 77. *Plowd.* 140. 6 *Co.* 15. *a.*

So if Tenant for Life, Remainder in Tail, Remainder in Tail: The Tenant for Life and he in the firſt Remainder in Tail levy a Fine; this is no Diſcontinuance, nor Deveſting of the ſecond Remainder: Becauſe each Party gives what he lawfully may. *Vide le Caſe,* 1 *Rep.* 76. *a. b.* 77. *a.* *Co. Litt.* 302. *b.* *Cr. Eliz.* 827. *Moor* 634. *Owen* 129. 2 *Leo.* 354. 2 *Jones* 58.

After the Ingroſſing of every Fine,

It ſhall be openly and ſolemnly proclaimed in the Court the ſame Term,

and in the next following Terms, at four ſeveral Days in every Term;

at which Time all Pleas are to ceaſe.

Now by 31 *Eli. c.* 2. Fines are to be proclaimed four Times; once in every Term.

**Wills therefore, that it be ordained, by the Advice of the Lords Spiritual and Temporal, and Commons in the ſaid Parliament aſſembled, and by the Authority of the ſame, That after the Engroſſing of every Fine ſo to be levied, after the Feaſt of** Eaſter, **which ſhall be in the Year of our Lord** 1496. **in the King's Court, afore his Juſtices of the Common Place, of any Lands, Tenements, or any other Hereditaments, the ſame Fine be openly and ſolemnly proclaimed in the ſame Court, the ſame Term, and in the three Terms then next following the ſame Ingroſſing in the ſame Court, at four ſeveral Days in every** (a) **Term. And in the ſame Time that it is ſo read and proclaimed, all Pleas to ceaſe; and the ſaid Proclamations ſo had and made, the Fine ſhall be a final End, and conclude as well Pri-**

(a) This Part of the Statute is now altered by the Statute of 31 *Eliz. cap.* 2. where it is enacted, That all Fines with Proclamations, ſhall be proclaimed only four Times, *viz.* once in the Term wherein it is ingroſſed, and once in every of the three Terms then next following. 2 *Inſt.* 519.

The Fine to be a final End, and conclude as well Privies as Strangers, Except Feme Coverts, other than Parties.

Infants, Perſons in Priſon, or out of the Realm, or not of whole Mind;

At the Time of the Fine levied, not Parties;

* Such Feme Coverts as are Parties.

vies (d) as Strangers to the ſame (e) except Feme Coverts, other than * be Parties to the ſaid Fine; and every Perſon then being within the Age of twenty-one Years, in Priſon, or out of this Realm, or not of whole Mind, at the Time of the ſaid Fine levied (g), not Parties to ſuch Fine.

The Word *Privies* extends only to Heirs in Fee.

(d) *Note*; It is the Opinion of ſeveral great Lawyers, that this Word *Privies* doth not extend to Heirs in Tail, but only to Heirs in Fee. *Vide Jones* 241, 242. and throughout the whole Caſe: And *per Hob.* 333. this Word *Privies* is the operative Word, and contains as much as all the Words in 32 *H.* 8. *cap.* 36. *viz.* All who are privy in Eſtate and Title to the Intail. Privity of Blood alone is nothing. *Hob.* 333. 2 *Inſt.* 516.

(e) *Note*; This is a Bar againſt the King by the Statute of 34 *H.* 8.

(f) See for this in the Statute of 32 *H.* 8. *cap.* 26. next following.

(g) This is intended of a compleat Fine, which gives a double Notice; one by Solemnity of the Fine in Court, and the other by Tranſmutation of Poſſeſſion in the Country. 2 *Inſt.* 517.

The Fines from the Entry in the King's Silver.

The Land ſhall paſs from the Time of the entring of the King's Silver, altho' the Fine be ingroſſed afterwards. 2 *Inſt.* 518.

Saving to every Perſon, other than Parties, ſuch Right, Claim and Intereſt as they have in the Lands at the Time of the Fine ingroſſed, ſo that they purſue their Title by Action or Entry within five Years after Proclamations.

And Saving to every Perſon and Perſons, and to their Heirs, other than the Parties to the ſaid Fine, ſuch Right, Claim and Intereſt, as they have to or in the ſaid Lands, Tenements, or other Hereditaments, at the time of ſuch Fine ingroſſed, ſo that they purſue their Title, Claim or Intereſt by way of Action, or lawful Entry, (h) within five Years next after the ſaid Proclamations had and made (i).

By *Formedon*, where there is a Diſcontinuance; by Entry, where not.

(h) By Action, or lawful Entry, that is, by *Formedon*, where there is a Diſcontinuance; and by lawful Entry, where there is not. *Vide* 2 *Inſt.* 518. Or by Entry of a Claim in the Record of the Foot of the Fine. 2 *Inſt.* 518.

Or by Claim on the Foot of the Fine.

32 *H.* 8. *cap.* 33. Diſſeiſor's Dying ſeiſed ſhall not take away the Entry.

Except he had peaceable Poſſeſſion five Years after the Diſſeiſin, without Entry or Claim.

(i) By the Statute of 32 *H.* 8. *cap.* 33. it is enacted, That the Dying ſeiſed of any Diſſeiſor, of or in any Manors, Lands, &c. having no Right or Title therein, ſhall not be taken from henceforth any ſuch Diſcent in Law, for to toll or take away the Entry of any ſuch Perſon or Perſons, or his or their Heirs, which at the Time of the ſame Diſcent had good and lawful Title of Entry into the ſaid Manors, &c. Except ſuch Diſſeiſor, &c. hath had the peaceable Poſſeſſion of ſuch

Manors, *&c.* whereof he ſhall ſo die ſeiſed, by the Space of five Years next after the Diſſeiſin by him committed, without Entry or continual Claim by or of ſuch Perſon or Perſons, as hath or have lawful Title thereunto.

If Diſſeiſor dies ſeiſed within five Years, though no Claim, it ſhall not toll the Entry; but after five Years, Claim muſt be made.

*Note*; If the Diſſeiſor dies within five Years after the Diſſeiſin, though there be no continual Claim, it ſhall not take away the Entry of the Diſſeiſee; but after the five Years, there muſt be ſuch continual Claim as was at the Common Law: But this Statute doth not extend to any Feoffee or Donee of the Diſſeiſor; for they remain as they were at the Common Law. 1 *Inſt.* 256. *a.*

Statute 4 & 5 *Annæ*, No Claim or Entry to be of any Effect to avoid a Fine.

Unleſs an Action is begun and proſecuted within a Year after ſuch Entry or Claim.

Now by the Statute of 4 & 5 *Annæ*, it is enacted, That no Claim or Entry to be made of or upon any Lands, Tenements or Hereditaments, ſhall be of any Force or Effect, to avoid any Fine levied, or to be levied with Proclamations, according to the Form of the Statute in that Caſe made and provided, in the Court of Common Pleas at *Weſtminſter*, or in the Courts of Seſſions in any of the Counties Palatine, or in the Courts of Grand Seſſions in *Wales*, of any Lands, Tenements or Hereditaments; or ſhall be a ſufficient Entry or Claim, within the Statute made in the twenty-firſt Year of King *James* I. intitled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*, unleſs upon ſuch Entry or Claim, an Action ſhall be commenced within one Year next after the making of ſuch Entry or Claim, and proſecuted with Effect.

Alſo ſaving to all Perſons ſuch Action, Right, Title, *&c.* as ſhall grow, deſcend or come to them, after the Fine engroſſed.

So that they take their Action, or purſue their Title, within five Years after ſuch Action, Right, *&c.* comes to them.

And may have their Action againſt the Pernor of the Profits.

And if the Perſons, when ſuch Action, Right, *&c.* comes to them, are under Coverture, within Age, in Priſon, out of the Realm, or not of ſound Mind,

**And alſo ſaving to all Perſons ſuch Action, Right, Title, Claim and Intereſt in or to the ſaid Lands, Tenements, or other Hereditaments, as firſt ſhall grow, remain, deſcend or come to them, after the ſaid Fine engroſſed, and Proclamation made, by Force of any Gift in Tail, or by any other Cauſe or Matter had and made before the ſaid Fine levied, ſo that they take their Action and purſue their ſaid Right and Title, according to the Law, within five Years (a) next after ſuch Action, Right, Title, Claim or Intereſt to them accrued, deſcended, fallen or come: And the ſaid Perſons, and their Heirs, may have their Action againſt the Pernor of the Profits of the ſaid Lands, Tenements and other Hereditaments, at the Time of the ſaid Action to be taken: And if the ſame Perſons, at the Time of**

If Feoffee of Tenant in Tail levy a Fine, the Iſſue in Tail has five Years to claim after his Father's Death.

(a) If Tenant in Tail make a Feoffment, and the Feoffee levy a Fine with Proclamations, the Iſſue in Tail ſhall have five Years to claim, after his Father's Death. *Dyer* 3. 3 *Co.* 87. *b.* *Cr. Eliz.* 896.

But Fine levied by Diſſeiſor of Tenant in Tail, five Years Non-claim after bars the Iſſue in Tail.

But if Tenant in Tail is diſſeiſed, and the Diſſeiſor levies a Fine with Proclamations, and the five Years paſs, and afterwards Tenant

**ſuch Action, Right and Title accrued, deſcended, remained and come unto them, be Covert de Baron, or within Age, in Priſon, or out of this Land, or not of whole Mind, then it is ordained by the ſaid Authority, that their Action, Right and Title, be reſerved and ſaved to them and their Heirs, unto the Time they come and be of full Age of twenty-one Years, out of Priſon, within this Land, uncovert, and of whole Mind; ſo that they, or their Heirs, take their ſaid Actions, or their lawful Entry, according to their Right and Title, within five Years next after they come to be of full Age, out of Priſon, within this Land, uncovert, and of whole Mind, and the ſame Actions purſue, or other lawful Entry take, according to the Law.**

Their Action, Right or Title is ſaved to them,

until they are of full Age, out of Priſon, within the Land, uncovert, and of whole Mind;

ſo that they purſue their Action or Entry within five Years after they are of Age, out of Priſon, within the Land, uncovert and of whole Mind.

in Tail dies, there the Iſſue is barred; for there the Tenant in Tail had the Right, and it attaching in him, he or his Iſſue in Tail ſhould have purſued it, within the five Years. 3 *Rep.* 87. *a. b. Cr. Eliz.* 896. *Co. Litt.* 372.

Whenſoever the five Years are attached, the Time goes on, though it ſhould come to an Infant, Feme Covert, *&c.* But if not attached, then they have five Years after theſe Impediments removed.

**But if Tenant in Tail makes a Feoffment, and levies a Fine, it bars his Iſſue.**

So where Tenant in Tail makes a Feoffment, and after levies a Fine, there his Iſſue ſhall be for ever barred, and ſhall not have five Years Non-claim. 3 *Rep.* 90. *a.* Becauſe his Iſſue cannot ſay, *partes finis nihil, &c.* but are barred by the 32 *H.* 8. *cap.* 36.

**Fine and Non-claim bars not a Remainder.**

*Note;* A Fine and five Years Non-claim ſhall not bar him in Remainder, from bringing his Writ of Error to reverſe it. *Jones* 181. 2 *Inſt.* 519.

**A Fine and Non-claim binds not the Eſtate, but the Right.**

**And if the Eſtate is not turned into a Right, needs no Claim.**

A Fine and Non-claim doth not bind the Eſtate, but the Right; and therefore there needs no Claim when the Fine doth not turn the Eſtate to a Right. *Raym.* 149.

**Fine by Tenant in Tail is only a Diſcontinuance to the Remainder or Reverſion.**

A Fine levied by Tenant in Tail, (tho' it binds the Iſſue) yet it is only a Diſcontinuance to the Remainder or Reverſion. 10 *Rep. Seymour's* Caſe.

**A Remainder or Reverſion cannot be diſcontinued by any but him to whom the Land is intailed.**

No Perſon can diſcontinue a Remainder or Reverſion, but only he to whom the Land is intailed; and therefore if Tenant in Tail grants *totum ſtatum* to one, and the Grantee makes a Feoffment in Fee, this ſhall not toll the Entry of him in the Remainder or Reverſion. 10 *Rep.* 97. *a.*

**Fine levied by Diſſeiſee bars not a future Right.**

Where a Man hath a future Intereſt, and the Leſſor is diſſeiſed, and the Diſſeiſee levies a Fine, the future Intereſt is not touched; and becauſe it is not turned to a Right, he is not bound to claim. *Raym.* 149. *Vide* 5 *Co.* 124. *Cr. Jac.* 60. 9 *Co.* 105.

*Note;* Where a Fine is levied by Tenant in Tail, who hath Power to levy ſuch Fine with Proclamations, it bars all Infants, Feme Coverts, *&c.* except where there is a Diſcontinuance, when their Right is ſaved. 3 *Rep.* 86, 87.

A Fine bars no Eſtate in Poſſeſſion, Remainder or Reverſion, not deveſted, nor him who had no Title of Entry.

But no Fine bars any Eſtate in Poſſeſſion, Reverſion or Remainder, which is not deveſted, and put to a Right; and he, who at the Time of Levying the Fine hath not any Title of Entry, ſhall not be barred. *Raym.* 149.

Fine and Non-claim bars no future Intereſt till five Years after it begins.

No future Intereſt can be barred by a Fine and Non-claim, until five Years after its coming *in Eſſe. See for this before, and in* Raym. 151.

A Right to an Extent extended, and a Term, will be barred by Fine and Non-claim.

A Right to an Extent * will be barred by Fine and Non-claim, as well as the Intereſt of a Right to a Term for Years, or any other ſuch like Eſtate. 2 *Ventr.* 329. and 5 *Rep. Saffin's* Caſe. 2 *Inſt.* 517. *Plowd.* 374. And where a Man ſeiſed in Fee made a Leaſe for Years, in Truſt for himſelf, to attend the Inheritance, and afterwards ſold the Inheritance, and levied a Fine to the Purchaſer; here the five Years Non-claim ſhall bar the Aſſignee of the Term, becauſe the Truſt paſſed incluſively in the Fine; ſo that it ſhall be intended, that the Conuſee of the Fine, who was the Purchaſer, knew nothing of this Term, for that there was not any Agreement made, to aſſign it over in Truſt for him: But if by Agreement, this Term had been to be aſſigned in Truſt to the Conuſee, it would not have barred it; for that the Fine levied by him who had the Inheritance, will work only upon the Inheritance, when it appears it was ſo intended, that the Term ſhould be kept on Foot. 2 *Ventr.* 329. and *Barnes* and *Freeman* in 1 *Sid.* 337, 458. 1 *Ventr.* 80, 81, 82. 1 *Lev.* 270. 1 *Chan. Rep.* 51, 65. *Vide Hardreſs* 400, 401, 402. *Raym.* 146, 147, 148, 149. *Carter* 177, 82. 1 *Inſt.* 270.

If one purchaſe a Term in Truſt for himſelf, and afrer the Inheritance, and ſells the Lands, five Years Non-claim ſhall bar the Term.

But if agreed to be aſſigned to a Conuſee, it will not bar it.

1 *Ventr.* 80, 81, 82.

Fine and Non-claim levied by Mortgagor in Poſſeſſion will not bar Mortgagee.

Where a Man mortgages his Land, and continues in Poſſeſſion, and afterwards levies a Fine, ſuch Fine and Non-claim for five Years ſhall not bar the Mortgagee. 1 *Sid.* 460. *Carter* 209, 210. 1 *Vent.* 82. 1 *Lev.* 272.

Leſſor ſhall have five Years after the Expiration of the Leaſe, on a Fine levied by Leſſee for Years or Life.

Leſſee for Years makes a Feoffment and levies a Fine, the five Years paſs; whether the Leſſor ſhall have five Years after the Term expired, was the Queſtion.

*Reſolved*, That he ſhould, as well as when the Leſſee for Life levies a Fine: And though it is ſaid in *Podger's* Caſe, 2 *Rep.* that where Leſſee for Years is ouſted by the Diſſeiſor, who levies a Fine, if the five Years paſs without Claim, the Leſſor is barred, that is not the ſame with this Caſe; for there the Diſſeiſor comes in without the Leſſee's Conſent; and if the Leſſee cannot hold his Poſſeſſion five Years, he is gone, but here all is done by the Privity and Conſent of the Leſſee, who is truſted with the Poſſeſſion; and it would be of miſchievous Import to Mens Inheritances, if they ſhould not have five Years to claim after the Leaſe is ended. 1 *Ventr.* 241, 242. *Vide Fermor's* Caſe in *Coke.* 3 *Keb.* 37, 110. *Raym.* 219. *Mo.* 71. *Cr. Eliz.* 254. *Cr. Car.* 157.

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* When the Land is extended; for till then it is a future Intereſt, and a Fine will not touch it. *Vide* 2 *Ventr.* 326. and throughout the whole Caſe. 1 *Mod. Rep.* 217. *Carter* 66, 71.

And that all Perſons *Covert de Baron*, not Parties to the Fine, Infants, Perſons in Priſon, out of this Land, or not of ſound Mind, at the Time of the Fine levied,

do take their Actions or Entry within five Years after they are of Age, out of Priſon, uncovert, &c.

Or to be concluded by the Fine for ever.

Saving to Perſons, not Parties nor Privies to the Fine, their Exception to avoid.

Also it is ordained by the Authority aforeſaid, That all ſuch Perſons as be Covert de Baron, not Party to the Fine, and every Perſon being within Age of twenty-one Years, in Priſon, or out of this Land, or not of whole Mind, at the Time of the ſaid Fines ſo levied and ingroſſed, and by this Act afore excepted, having any Right or Title, or Cauſe of Action, to any of the ſaid Lands, and other Hereditaments, that they or their Heirs, inheritable to the ſame, take their ſaid Actions or lawful Entry (a) according to their Right or Title, within five Years next after they come and be of Age of twenty-one Years, out of Priſon, uncovert, within this Land, and of whole Mind; and the ſame Actions ſue, or their lawful Entry take and purſue according to the Law; and if they do not take their Actions and Entry as aforeſaid, that they, and every of them, and their Heirs, and the Heirs of every of them, be concluded by the ſaid Fines for ever, (b) in like Form as they be, who be Parties or Privies to the ſaid Fines; ſaving to every Perſon or Perſons not Party or Privy to the ſaid Fines, their Exception to avoid the ſaid Fines by that, That thoſe which were Parties to the ſaid Fines, nor any of them, nor no Perſon or Perſons to their Uſe, nor to the Uſe of any of them, had nothing in the Lands and Tenements compriſed in the ſaid Fine, at the Time of the ſaid Fine levied. See for this before.

(a) This Action or lawful Entry, muſt be (*viz.* the Action) by *Formedon*, as it is before ſaid; and the Entry muſt be purpoſely to deſtroy the Fine, not a general and bare Entry, for that will not do. *Vide* 2 *Inſt.* 518. and the Statute of 4 & 5 *Annæ*. Antiently the Claim was put upon the Backſide of the Record of the Fine, in this Manner, *A. B. venit tali die & apponit Clameum ſuum ad terras infraſcriptas.* Plow. Com. 358. b.

(b) See for this before, and alſo 2 *Inſt.* 519. and *Plow. Com.* 366. *a.*

Tho' the Iſſue in Tail is beyond Sea, an Infant, under Coverture, &c. he is barred by the Fine.

Altho' the Iſſue in Tail be beyond Sea, yet becauſe he is Privy and out of the Savings, he is bound; ſo alſo where he is an Infant, Feme Covert, *Non compos, &c.* for if Infancy, Coverture, Impriſonment, *&c.* of the Heir in Tail, would impower him to avoid a Fine, no Man could be aſſured of any Land conveyed to him by Fine. 3 *Rep.* 91. *a. b.*

And it is ordained by the ſaid Authority, That every Fine which hereafter ſhall be levied in any of the King's Courts, of any Manors, Lands, Tenements and other Poſſeſſions, after the Manner, Uſe and Form that Fines have been levied afore the Making of this Act, be of the like Force, Effect and Authority, as Fines ſo levied be and were before the Making of this Act: This Act, or any other Act in this ſaid Parliament made, or to be made, notwithſtanding: And every Perſon ſhall be at Liberty to levy any Fine hereafter at his Pleaſure, whether he will after the Form contained and ordained in and by this Act, or after the Manner and Form aforetime uſed.

32 H. 8. *cap.* 36. For the Expoſition of Fines.

Here follows the Statute of 32 H. 8. cap. 36. For the Expoſition of the Statute of Fines.

The Preamble.

A Recital of the 4 H. 7. *cap.* 24.

Foraſmuch as in the fourth Year of the Reign of the late King, of famous Memory, Henry VII. Father of our moſt dread Sovereign Lord the King that now is, there was, among many good and ſundry Statutes and Ordinances then made for the Commonwealth, Enacted, Ordained and Eſtabliſhed, the Form and Manner, how Fines ſhould be levied with Proclamations (a) in the King's Courts, before his Juſtices of the Common Pleas, and that ſuch Fines with Proclamations ſo had and made to the Intent to avoid all Strifes and Debates, ſhould be a final End, and conclude as well Privies (b) as Strangers to the ſame, (certain Perſons excepted and ſaved) as in the ſame Statute more plainly appeareth; ſithen which Time, by Diverſity of Interpretations and expounding of the ſame Statute, it hath been, and is yet by ſome Manner of Perſons doubted and called in Queſtion, whether Fines with Proclamations, levied or to be levied before the ſaid Juſtices, by any Perſon or Perſons, having or claiming to have, in any Manors, Lands, Tenements

Every Fine ſhall be intended to be levied with Proclamations.

(a) Every Fine ſhall be intended to be levied with Proclamations, according to the Statute, for this is more beneficial for the Conuſee; and all Fines being the general Aſſurances of Lands are levied accordingly. 3 *Rep.* 86. *b.*

Heir in Tail cannot aver Seiſin in a Stranger, when the Fine was levied.

(b) An Heir in Tail cannot aver Seiſin and Continuance in a Stranger from the Time of the Fine levied; neither can he aver, that *Partes nihil habuerunt*, becauſe the Fine of his Anceſtor, by Virtue of this Statute, bars him. *Vide* 3 *Rep.* 88. *Stowel's* Caſe, *Plow. Com.*

*Note*; This is in Caſe of a Fine *ſur Conuſans de droit*, but not of a Fine *ſur* Grant and Render. 3 *Rep.* 89. *b.*

Privies here are not taken for Privies in Blood, but in Eſtate.

Privies here are not taken for Privies in Blood, but Privies or Hereditaments, compriſed in the ſame Fine, in Poſſeſſion, Reverſion, Remainder, or in Uſe, any Manner of Eſtate-tail, ſhould immediately after the Fine levied, ingroſſed, and Proclamations made, bind the right Heir and Heirs of ſuch Tenant in Tail, (a) and every other Perſon and Perſons, ſeiſed or claiming to their Uſe and Uſes, by Occaſion whereof divers Debates, Controverſies, Suits and Troubles have been begun, moved and had, within this Realm, and more be like to enſue, if Remedy for the ſame be not provided; for the Eſtabliſhment and Reformation whereof, and for the ſure and ſincere Interpretation of the ſaid Statute, in avoiding all Dangers, Contentions, Controverſies, Ambiguities and Doubts that hereafter may ariſe, grow and happen, our Sovereign Lord the King, with the Aſſent of the Lords Spiritual and Temporal and the Commons in Parliament aſſembled, and by the Authority of the ſame, hath enacted and ordained, that all and ſingular Fines, as well heretofore levied, or hereafter to be levied before the ſaid Juſtices, with Proclamations according to the Statute, by any Perſon or Perſons of the full Age of twenty-one Years, of any Manors, Lands, Tenements or Hereditaments, before the Time of the ſaid Fine levied, in any wiſe intailed to the Perſon or Perſons ſo levying the ſame Fine, (b) or to any the Anceſtors of the ſame Perſon or Perſons in Poſſeſ-

All Fines with Proclamation levied by any Perſon of full Age, of any Lands intailed to him or his Anceſtors, in Poſſeſſion, Reverſion, Remainder, or in Uſe,

vies in Eſtate; though there be a Privity in Blood, yet if there be not ſuch Privity as the Law takes Notice of, he is not bound. *Carter* 7. *Hob.* 333.

The Word *Privies* in the Purview of the Act of 4 *H.* 7. contains as much as all the Words in 32 *H.* 8. *cap.* 36. viz. *all Privies to them who levy the Fine*: This is Privity in Eſtate, and Titles to the Intail are bound; for Privity of Blood only is nothing. *Hob.* 343. 1 *Leon.* *Zouch*'s Caſe, and alſo in *Plow. Com.* *Stowel* and *Zouch*.

The Statute hath a Saving for Strangers, but not for Privies; and therefore the Exception of *Partes finis nihil, &c.* is given to all Perſons, not Parties nor Privies, but to Strangers only. 1 *Leon.* 353.

Provided in the Caſe of Strangers, the Eſtate whereupon the Fine is levied, is not turned to a Right, and the five Years Non-claim thereupon. *Plow. Com.* 358. *b.*

(a) See for this the Earl of *Derby*'s Caſe, in *Jones*, the laſt Caſe in the Book, and alſo in ſeveral Places in *Raymond*.

(b) The Statute leaves the Form and Effect of the Fine (as to all Perſons and Purpoſes, but the Iſſue in Tail)

**Poſſeſſion, Reverſion, Remainder or in Uſe, ſhall be, immediately after the ſame Fine levied, ingroſſed, and Proclamation made, (a) adjudged, accepted, deemed and taken to all Intents and Purpoſes, a ſufficient Bar and Diſcharge for ever againſt the ſaid Perſon and Perſons, and their Heirs, claiming the ſame Lands, Tenements and Hereditaments, or any Parcel thereof, only by Force of any ſuch Intail, and againſt all other Perſons claiming the ſame, or any other Parcel thereof only, to their Uſe, or to the Uſe of any Manner of Heir of the Bodies of them, any Ambiguity, Doubt, or Contraroſity of Opinion riſen, or grown upon the ſaid Statute to the contrary notwithſtanding.**

ſhall be judged a ſufficient Bar,

againſt him, or his Heirs claiming the Lands by Force of ſuch Intail.

Tail to the ordinary Rules of Law. *Hob.* 258.

H. and Wife Tenants in ſpecial Tail, Remainder to B. in Tail, Remainder to C. in Fee, *H.* alone levies a Fine and dies, and his Wife enters: It is a Remitter to her and to B. and C. in Remainder, but the Iſſue of *A.* is barred.

Where a ſpecial Intail is to *A.* and his Wife, Remainder to *B.* in Tail, Remainder to *C.* in Fee, *A.* alone levies a Fine to *D.* in Fee; *A.* dies leaving Iſſue *. The Wife enters, ſhe is remitted to her Eſtate-Tail, and alſo remits *B.* and *C.* to their ſeveral Remainders, and hath put *D.* out of his whole Eſtate; but the Fine hath barred the Iſſue of *A.* for ever, and ſhall bar the Remainders as long as the Iſſue of him who levied the Fine ſhall live, and have Iſſue. *Hob.* 259.

* His Iſſue are barred by this Fine. *Hob* 259 *Keil.* 205. *Dyer* 251. 8 *Co.* 72. 2 *Inſt.* 681. 9 *Co.* 139. *a.* 2 *Bend.* 50. *Moor* 28.

Fine levied by the Father, (the Grandfather being Tenant in Tail) it binds his Iſſue.

If the Father levies a Fine with or without Diſſeiſin of the Grandfather who is Tenant in Tail, the Iſſue in Tail is bound by this Fine, whether the Grandfather dies before or after the Father. *Hob.* 258. See *Archer*'s Caſe, 1 *Rep.*

Baron and Feme Tenants in ſpecial Tail; Fine by Baron bars the Iſſue.

But the Wife may be remitted, or enter as Tenant in Tail, on his Death.

Where Baron and Feme are Tenants in ſpecial Tail, the Husband's Fine in the Wife's Life-time is a Bar to the Iſſue, although the Wife may (if ſhe ſurvive) be remitted, if any Eſtate is limited to her upon her Husband's Fine; if not, ſhe may enter as Tenant in Tail. *Hob.* 257, 259. *Keilw.* 205. *Dyer* 251. 2 *Inſt.* 681. 8 *Co.* 72. 9 *Co.* 139. *a.* 2 *Bendl.* 50. *Moor* 28.

A Fine by Tenant in Tail in Poſſeſſion, Reverſion or Remainder, bars his Iſſue.

A Man who is Tenant in Tail, in Poſſeſſion, (10 *Rep. Seymour's* Caſe) Reverſion or Remainder, (*Hobart* 332, 333. 3 *Rep.* 88. *a.*) by levying of a Fine bars his own Iſſue.

Tenant in Tail levies a Fine, and dies before Proclamations paſt; if the Proclamations paſs without Claim made by the Iſſue, his Right is barred, and he cannot by any Claim ſave his Right.

Where Tenant in Tail levies a Fine, and dies before the Proclamations are paſſed, though a Right of the Tail deſcends to the Iſſue; yet when the Proclamations are paſſed without a Claim made by the Iſſue upon the Land, this Right which deſcended to him is barred, by this and the former Statute.

Alſo the Iſſue in Tail cannot, by any Claim that he can make, ſave the Right of the Tail which deſcends to him, but after Proclamations paſſed, the Tail ſhall be barred by theſe Statutes. 3 *Rep.* 87. *a. Plowd.* 430, 435. 2 *And.* 177. *Mo.* 628. *Cr. Eliz.* 589.

There is no Saving in this Act, for the Iſſue in Tail, after the Proclamations paſſed, nor any Power left for him to make Claim; for the Intent of the Act was to bar his Right. 3 *Rep.* 87. *b.*

**Tho' the Iſſue enters before Proclamations paſt, yet when paſſed it is a Bar.**

And if Tenant in Tail levies a Fine and dies, although his Iſſue enters before the Proclamations are paſſed, yet they ſhall paſs notwithſtanding; and when they are paſſed, it ſhall be a perpetual Bar. 3 *Rep.* 88. *a.*

**And if he brings a *Formedon* before Proclamations paſſed.**

Tenant in Tail having Iſſue a Daughter, levies a Fine, and dies before Proclamations paſſed; the Daughter immediately before Proclamations paſſed brings her *Formedon*: The Tenant pleads the Fine and Proclamations paſſed, pending the *Formedon*; this is a Bar to the Demandant, and yet a Right of the Intail deſcended to the Daughter, and ſhe preſently brought her Writ; for the Fine is the Conveyance of the Eſtate, and the Proclamations are but a brief Repetition of the Fine, and are only added to declare, that this is a Fine according to the Statute to bind Eſtates-Tail, and not a Fine at the Common Law. 3 *Rep.* 90. *b. Plowd.* 435.

*Note*; Here four Things are to be obſerved:

I. That though after the Fine levied a Right deſcended to the Daughter, yet after Proclamations paſſed the Right which deſcended to her, is barred by Force of this Fine. 3 *Rep.* 90. *b.*

II. Although the *Formedon* was brought, when the Proclamations were paſſed, the Fine was a Bar. 3 *Rep.* 90. *b.*

III. When Tenant in Tail levies a Fine, and dies before Proclamations, the Iſſue in Tail is not within any of the Savings of the 4 *H.* 7. *Ibid.*

IV. That the Proclamations ſignify no more, but to diſtinguiſh this to be a Fine according to the Statute. 3 *Rep.* 90. *b.* 91. *a.*

**The Heir in Tail may be barred, though the Eſtate is defeated before Proclamations paſt.**

The Heir in Tail may be barred by the Statute of 32 *H.* 8. although the Eſtate which paſſed by the Fine, be defeated before the Proclamations paſſed; for when the Proclamations are afterwards paſſed, the Eſtate-Tail ſhall be barred. 3 *Rep.* 92. *a.*

Proviſo not to bar the Entry or Title to any Heir, &c. to any Lands.

**Provided always, That this Act nor any Thing therein contained, ſhall extend to bar or exclude the lawful Entry, Title or Intereſt, of any Heir or Heirs, Perſon or Perſons, heretofore given, or hereafter to be given, grown or accrued to them, or to any of them, to any Manors, Lands, Tenements and Hereditaments, by Reaſon of any Fine levied, or hereafter to be levied, by any**

By Reaſon of any Fine levied by any Woman, after her Husband's Death, of any Lands purchaſed by the Huſband, or his Anceſtors.

11 *H.* 7. *cap.* 20.

Given or aſſign'd to her in Dower, for Life, in Tail, in Uſe, or in Poſſeſſion.

any Woman, after the Death of the Husband, contrary to the Form, Intent and Effect of the Statute made in the ſaid eleventh Year of the late King Henry the VIIth, of any Manors, Lands, Tenements and Hereditaments of the Inheritance or Purchaſe of the ſaid Husband, or of any of his Anceſtors, given or aſſigned to any ſuch Woman in Dower, for Term of Life, or in Tail, in Uſe, or in Poſſeſſion; but that the ſame Act made in the ſaid eleventh Year of the ſaid late King Henry the VIIth ſhall ſtand, remain and be, in full Force and Virtue, in every Article, Senſe and Clauſe therein contained, in like Manner and Form, as tho' this preſent Act had never been made. See for this in Title Jointereſs, Statute of 11 H. 7. cap. 20.

Provided alſo, That this Act nor any Thing therein contained, do extend to any Fine or Fines, at any Time heretofore levied or hereafter to be levied, of any Lordſhips, Manors, Lands, Tenements or other Hereditaments whatſoever they be, the Poſſeſſioners and Owners whereof, by Reaſon of any expreſs Words contained in any ſpecial Act of Parliament made or ordained ſince the ſaid fourth Year of the Reign of the ſaid late King Henry VII. ſtand, be bounden, or reſtrained from making any Alienation, Diſcontinuance, or other Alterations of any of the ſame Lordſhips, Manors, Lands, Tenements or Hereditaments, contained in the ſaid Fine or Fines; but that all and every ſuch Fine and Fines, at any Time heretofore levied, or hereafter to be levied, by any ſuch Perſon or Perſons, or their Heirs, of any ſuch Lordſhips, Manors, Lands, Tenements, or other Hereditaments, ſhall be of ſuch like Force and Strength in the Law, and of none other Effect than the ſame ſo levied, or to be levied, ſhould have been, if this preſent Act had never been had or made; any Thing therein contained to the contrary thereof in any wiſe notwithſtanding.

Provided alſo, That this preſent Act, nor any Thing therein contained, ſhall extend to any Fine or Fines heretofore levied, of any Manors, Lands, Tenements, or Hereditaments now in Suit or Variance in any of the King's Courts, &c. (and ſo goes on to other Things to the ſame Purpoſe, now long ſince expired) but that ſuch Fines ſhall be of like Force and Strength, as they ſhould have been, if this Act had not been made.

Feoffment in Fee by Tenant in Tail, drives his Iſſue to his *Formedon*.

Where Tenant in Tail, the Reverſion being in the Donor and his Heirs, or Remainder to another in Tail, or to another in Fee, makes a Feoffment in Fee, Fee-tail, or for Life, this drives the Iſſue in Tail to his Action of Formedon in Reverter, and is called a Diſcontinuance; for that the Entry of the Iſſue is forecloſed, and ſo conſequently of them in Remainder and Reverſion. Litt. ſect. 596, 597. Co. Litt. 327. a. b. A Feoffment bars not the Iſſue of his Action, but works a Diſcontinuance to bar him of his Entry. Ibid.

A Feoffment bars him not of his Action, but of his Entry.

*Note* the Diverſity between Alienations, which take away an Entry, and which take away no Entry.

But note; There is a Diverſity between an Alienation working a Diſcontinuance of an Eſtate, which takes away an Entry, and an Alienation working, deveſting or diſplacing of Eſtates, which takes away no Entry; as if there be Tenant for Life, Remainder to A. in Tail, Remainder to B. in Fee, if Tenant for Life, aliens in Fee, this deveſts and diſplaces the Remainders, but works no (a) Diſcontinuance. Co. Litt. 327. b.

None can make a Diſcontinuance but he who is ſeiſed of the Freehold and Inheritance.

(a) Becauſe an Eſtate cannot be diſcontinued but where he who maketh the Diſcontinuance was once ſeiſed of the Freehold and Inheritance of the Eſtate-Tail. *Vide Co. Litt.* 347. *b. Litt. ſect.* 637.

What a Diſcontinuance is.

A *Diſcontinuance* of Eſtates in Lands is an Alienation made or ſuffered by Tenant in Tail, or by any one ſeiſed *in auter droit*, whereby the Iſſue in Tail, or the Heir or Succeſſor, or thoſe in Reverſion or Remainder are driven to their Action, and cannot enter. *Co. Litt.* 325. *a.*

The five ſeveral Ways that Lands may be diſcontinued.

When *Littleton* wrote, an Eſtate in Lands might be diſcontinued five Manner of Ways, (*viz.*) by Feoffment, by Fine, by Releaſe with Warranty, by Confirmation with Warranty, and by ſuffering a Common Recovery; but ſome Alterations have been made ſince by ſome Statutes, which ſee in *Co. Litt.* 325. *a. b.*

Inheritances which lie in Grant cannot be diſcontinued by Grant.

Such Inheritances as lie in Grant, cannot by Grant be diſcontinued; becauſe ſuch Grant deveſteth no Eſtate, but paſſeth only what he may lawfully grant. *Co. Litt.* 327. *b. Litt. ſect.* 627, 628. 3 *Co.* 85.

Where a collateral Warranty ſhall bind, and where not.

If my collateral Anceſtor releaſes to my Tenant for Life, and dies, this ſhall not bind me, becauſe the Reverſion continues in my Perſon. But if my Tenant for Life is diſſeiſed, and my Anceſtor releaſes to the Diſſeiſor with Warranty, and dies, this ſhall bind me; for that as well the Eſtate of the Tenant for Life as my Reverſion was deveſted out of me at the Time of the * Warranty made. 10 *Rep.* 97. *a.*

Where a Fine ſhall enure as a Releaſe, the Conuſee having the Fee before.

If *A.* enfeoffs *B.* of Land in Fee, rendring Rent, with Condition of Re-entry for Non-Payment, and by Indenture at the ſame time covenants to levy a Fine of the ſame Land to the Feoffee, to the Uſes and Conditions in the Deed of Feoffment; and after a Fine is levied *ſur conuzance de droit come ceo, &c.* accordingly: In this Caſe, the Fine ſhall enure as a Releaſe, becauſe the Conuſee hath the Fee before; and it ſhall not enure by way of Eſtoppel; and therefore the Rent and Condition ſhall remain in this Caſe, and not be extinct. 2 *Rep.* 72. *b.* 73. *a.*

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* *Note*; This was before the 4 & 5 *Anne*, but now thoſe collateral Warranties are gone, unleſs made by an Anceſtor who hath ſome Inheritance in Poſſeſſion therein.

Tenant in Tail ſells in Fee by Bargain and Sale inrolled, and after Inrollment levies a Fine to him.

It is no Diſcontinuance.

And before the Fine the Eſtate determined on Death of Tenant in Tail; but after, not until his Death without Iſſue;

but it is a Diſcontinuance if the Fine is levied before Inrollment.

Where Tenant in Tail (Remainder in Tail) bargains and ſells in Fee, and after the Inrollment of the Deed levies a Fine to the Uſe of the Bargainee; this Fine makes no Diſcontinuance, becauſe it doth not touch nor diſplace the Remainder; and no Eſtate of Freehold paſſes by the Fine levied, but the Fine corroborates the Eſtate of the Bargainee; And whereas it was before determinable upon the Death of the Tenant in Tail, now it is not determinable until his Death without Iſſue: But if the Fine had been levied before the Inrollment of the Bargain and Sale, it had been a Diſcontinuance.

But here the Fine operated upon the precedent Eſtate which paſſed by the Bargain and Sale, and is guided by the precedent Eſtate. 10 Rep. *96.* a. 1 Bulſt. 162.

29 *Car.* 2. *cap.* 23. All Declarations or Creations of Truſt, *&c.* of any Land, *&c.* muſt be manifeſted and proved by ſome Writing ſigned by the Party;

or by Will in Writing; or elſe to be void.

By the Act of Frauds and Perjuries, 29 Car. 2. ca. 23. it is enacted, That all Declarations or Creations of Truſts or Confidences of any Lands, Tenements or Hereditaments, ſhall be manifeſted and proved by ſome Writing ſigned by the Party who is by Law enabled to declare ſuch Truſt, or by his laſt Will in Writing, or elſe they ſhall be utterly void, and of none Effect.

All reſulting Truſts, by Implication of Law, are as they were before.

This Statute leaves all reſulting Truſts by Implication or Conſtruction of Law, as they were before the Statute.

All Grants or Aſſignments of Truſts to be in Writing.

Alſo it enacts, That all Grants and Aſſignments of any Truſts or Confidences ſhall be in Writing, ſigned by the Parties granting or aſſigning the ſame by ſuch Will or Deviſe, or elſe ſhall be void.

4 & 5 *Annæ.*

All Declarations of Uſes or Truſts by Deed, made after the Levying or ſuffering a Fine or Recovery, are good.

Then comes the Statute of 4 & 5 Annæ, and ſays, That whereas it had been doubted whether ſince the Act of Frauds and Perjuries, the Declarations or Creations of Truſts or Confidences of any Fines, or Common Recoveries, manifeſted by Deed made after the Levying or Suffering of ſuch Fines or Recoveries, are good and effectual in Law; It is thereby declared, That all Declarations or Creations of Uſes, Truſts or Confidences of any Fines or Common Recoveries of any Lands, Tenements or Hereditaments manifeſted and proved, or which ſhall hereafter be manifeſted and proved, by any Deed already made, or hereafter to be made (by the Party who is by Law enabled to declare ſuch Uſes or Truſts) after the Levying or Suffering of any ſuch Fines or Recoveries, are or ſhall be as good and effectual in the Law, as if the ſaid laſt mentioned Act had not been made.

Writs of Error to reverſe Fines, and how brought.

Where a Writ of Error is brought in B. R. to Reverſe a Fine levied in C. B. the Tranſcript only, and not the very Record of the Fine is removed: But if the Court of B. R. adjudge it erroneous, then a Certiorari goes to the Chirographer to certify the Fine it ſelf, and when it comes up it is cancelled. 1 Salk. Rep. 341.

*Scire facias.*

The Court of B. R. will not Reverſe a Fine of Lands for Error, without a Scire Facias return'd againſt the Tertenant. 339.

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Grants.

# Grants.

Grant, what it is.

A Grant is a Conveyance in writing of incorporeal Things not lying in Livery, and which cannot paſs by Word only. 1 Inſt. 172, 332. a.

Every Grant ſhall be taken moſt ſtrongly againſt the Grantor.

Every Covenant and Grant ſhall be taken moſt ſtrongly againſt him who makes it, becauſe he is preſumed to receive a valuable Conſideration for what he parts with. 2 Roll. Abr. 56. And if it cannot take Effect as the Parties expreſs, it ſhall take Effect as it may, rather than the Deed or Grant ſhall be void. Raym. 142. or by another way than what the Parties deſigned. Lucas 35. And if the Words have a double Signification, this ſhall extend to the Diſadvantage of him who ſpeaks them, and ſhall be conſtrued moſt to the Advantage of the other. Raym. 142.

Where the Words have a double Signification how it ſhall be.

A Deed may be void againſt ſome Perſons, but not againſt the Grantor.

A Deed may be void as to ſome Perſons and to ſome Purpoſes, yet it is always good againſt the Perſon who makes it. Hob. 166.

The ſeveral Grounds for the Expoſition of Deeds.

They are to be beneficial to the Taker; according to Intent; Conſonant to the Rules of Law.

There are four Grounds for the Expoſition of Deeds and Grants.

1. They muſt be beneficial to the Taker. 2. They ſhall never be void where the Words may be applied to ſome Intent. 3. The Words ſhall be conſtrued according to the Intent of the Parties, and not otherwiſe. Plow. Com. 160. b. And they are to be Conſonant to the Rules of Law. Litt. Rep. 345.

So that all Parts may be effectual if they can ſtand together by the Rule of Law, ut res magis valeat quam pereat. Poph. 138. Carter 98. Fitz-Gib. 214. to 224.

There muſt be a Donor, Donee, and Thing given, to all Gifts or Deviſes.

In all Gifts of Lands or Goods, be they by Grant, Deviſe or otherwiſe, there muſt be a Donor, a Donee in eſſe, (who hath Capacity to take when the Thing happens) and Thing given. Plow. Com. 345. a.

The Common Law ſhall be preferred before Eſtates by Statute Law.

**An Eſtate veſted by the Common Law, ſhall be preferred before an Eſtate by Statute. And where Grants by Conveyances may enure two Ways, the Common Law ſhall be preferred.** 2 Inſt. 672. 4 Rep. 70. b. 71. a. b. 72. a.

Every Grant ſhall be taken moſt ſtrongly for the Grantee to have his Election.

**It is a Rule that every Grant ſhall be taken moſt ſtrong for the Grantee to have his (a) Election.** Litt. R. 371.

What is an Election.

(a) Election is where a Man is left to his own Choice, to take or do one Thing or another as he pleaſes.

A Grant is a Common Law Conveyance.

**And a Grant is a Common Law Conveyance of Things that lie in Grant, and not in Livery; as Advowſons, Rents, Services, Commons, Reverſions, Remainders (b) and ſuch like.** Co. Litt. 172. a.

When and where there ought to be Attornments.

(b) But to Reverſions and Remainders, when *Littleton* wrote, there ought to be Attornments. *Co. Litt.* 10. *a. Litt. ſect.* 377, 578. But ſince his Time they will paſs (if a Freehold) by Deed of Bargain and Sale inrolled, for a valuable Conſideration. Alſo by Bargain and Sale for a Year for Money without Inrollment, and a Releaſe of the Reverſion thereupon; ſo alſo they will paſs by Fine. *Vaugh.* 50, 51. *Co. Litt.* 309. *b.* 321. *b.*

Now there need no Attornments.

And why.

27 H. 8.

So alſo upon a Covenant to ſtand ſeiſed in Conſideration of Blood, &c. Alſo to Conveyances executed by 27 *H.* 8. there needs no Attornment. 6 *Rep.* 68. *b.*

Now they are taken away by the Statute of the 4 & 5 *Anna.*

But now by the Act for the Amendment of the Law, made 4 & 5 *Annæ*, it is enacted, That all Grants and Conveyances to be made by Fine, or otherwiſe, of any Manors, or Rents, or of the Reverſions or Remainders of any Meſſuages or Lands, ſhall be good and effectual without the Attornment of the Tenants of ſuch Manors, or of the Lands out of which ſuch Rents ſhall be iſſuing, or of the particular Tenant upon whoſe Eſtate any ſuch Remainder ſhall be expectant or depending, as if Attornment had been had and made.

But Notice muſt be given to the Tenant.

But, ſays the Statute, Notice muſt be given of ſuch Grant to the Tenant, before he ſhall be prejudiced by Payment of any Rent to ſuch Grantor, or Breach of any Condition for Non-payment of Rent. See the Statute 11 *Geo.* 2. at the End of Title *Tenant for Years*, which makes all Attornments of Tenants void, unleſs they are made as the Act provides.

How the Words of a Grant ſhall be conſtrued.

The Words of a Grant ſhall be conſtrued according to a reaſonable and eaſy Senſe, and not ſtrained to Things unlikely and unuſual. *Hob.* 34.

Where all who have Intereſt join, it makes a good Grant.

Where every one, who hath a Title and Intereſt, joins in the Grant, it remains perpetually good. *Fenner*, Juſtice. *Poph.* 50.

How Conveyances ought to be expounded.

Says my Lord Chief Juſtice *Hobart*, Thoſe Judges are commendable, who are curious and almoſt ſubtile, to invent Reaſons and Means to make Acts effectual, according to the juſt Intent of the Parties, and to avoid Wrong and Injury, which by rigid Rules might be wrought out of thoſe Acts. *Hob.* 277. 1 *Ventr.* 141. *Per Hale*, Chief Juſtice.

What the Words *Give and Grant* in a Deed will amount unto.

How a Gift, a Releaſe, Confirmation or Surrender may be pleaded.

**The Words** Give and Grant **in a Deed of Things which lie in Grant, (as Advowſons, Rents, Commons, Reverſions, &c.) will amount unto a Grant, a Feoffment, (a) a Gift, a Releaſe, a Confirmation or Surrender at the Election of the Party; and may be pleaded as a Grant, as a Releaſe, or a Confirmation, at his Election.** Co. Litt. 301. b. 2 Saund. 96, 7.

(a) When it is a Feoffment there muſt be Livery.

The Words of a Grant by Deed Poll.

**The Words of a Grant by Deed Poll are,** Know all Men by theſe Preſents, (b) That I *A. B.* have given and granted, and do by theſe Preſents give and grant unto *C. D.* and his Heirs, *&c.* to have and to hold, *&c.* **And this Conveyance is executed only by Signing, Sealing and Delivery, without Livery.** **See Litt.** ſect. 531.

Or it may be by Indenture.

(b) Or it may be by Deed indented. The Words of an Indenture are the Words of both Parties. *Cro. Jac.* 358. *Pl.* 4. 1 *Leon. Caſe* 446. *Lucas* 47, 48.

How this Conveyance is executed.

Where the *Habendum* comes to limit the Eſtate.

How the *Habendum* is to be conſtrued.

Where many Things are granted in a Deed, and the *Habendum* comes to limit the Eſtate; if it recites again particularly all the Things, it is ſuperfluous, and ſuch Recital is of no Effect: But the *Habendum* ſhall be conſtrued, as if there had been no Recital, but only the *Habendum & Tenendum.* But where a Deed contains ſeveral Limitations of Eſtates, as one Part of the Premiſſes for twenty Years, another for thirty Years, or for Life, *&c.* there the Certainty of the ſeveral *Habendums* is to be regarded, though not where there is but one *Habendum.* *Moor, Caſe* 360.

A contrary Name of Baptiſm.

A Man makes a Leaſe for Years by a contrary Name of Baptiſm; this is a good Leaſe, for it is not grounded meerly upon the Indentures, but partly upon the Demiſe. 2 *Roll. Abr.* 42.

By a wrong Name.

So where *Joan* leaſes for Years, by the Name of *Jane*, although they are ſeveral Names, yet this is a good Leaſe. 2 *Roll. Abr.* 42. *Co. Litt.* 3.

By wrong Name.

A Man is baptized by the Name of *J.* and is known by another Name, and he grants by the known Name, it is good. 2 *Roll. Abr.* 42.

By a wrong Name of Baptiſm.

And if a Man be baptized by one Name and confirmed by another, he may be Grantee by the Name confirmed. *Ibid.*

A Grant by a wrong Name.

A Grant to *A.* and *Ellen* his Wife, her Name being *Emlin*; this is good, becauſe ſhe is named the Wife of *A.* 2 *Roll. Abr.* 42. 2 *H.* 4. 25. *Co. Litt.* 3.

A Remainder limited to a Baſtard.

A Remainder limited to *J. S.* Son to *W. S.* who is a Baſtard; yet if he is known to be Son of *W. S.* it is good. *Ibid.*

A Grant to one not naming his Chriſtian Name.

A Grant to one not naming his Chriſtian Name is void, except where a Perſon is known, by expreſſing of his Office. *Cr. El.* 328. *pl.* 1. 36 *H.* 6. 26. *Dyer* 279. *Owen* 207. *Co. Litt.* 3. *Cr. Jac.* 558, 640. *Perk. ſect.* 38.

Grant to Biſhop in his Political Capacity.

A Grant to a Biſhop by the Deſcription of *Epiſcopus De, &c.* inures to him and his Succeſſors; where it is not to him by the Name of *John* or *Thomas*, but in his political Capacity. *Fitz-Gib.* 308, 312.

No Conſtruction of a Grant to the Prejudice of any.

**The Law will never make any Conſtruction againſt the Purport of a Grant, to the Prejudice of any, or againſt the Meaning of the Parties.** Co. Litt. 313. a.

Where Words ſhall be tranſpos'd and marſhalled.

**Words ſhall be tranſpoſed and marſhalled that a Feoffment or Grant may take** (a) **Effect.** Co. Litt. 217. b.

Where Words of Signification ſhall be rejected.

(a) Words of a known Signification, but ſo placed in the Context of a Deed, that they make it repugnant and ſenſeleſs, are to be rejected equally with the Words of no Signification. *Vaugh.* 176.

Where an Addition ſhall not hurt.

Addition of a falſe Thing in a Grant of a common Perſon, as falſe Poſſeſſion, *&c.* ſhall never hurt it, where there is any Manner of Certainty before. *Cro. Car.* 548. *pl.* 1. 2 *Mod.* 3.

Where an impoſſible Grant may come to take Effect.

**Where the Grant is impoſſible to have Effect according to the Letter, there the Law ſhall make ſuch a Conſtruction, as the Grant by Poſſibility may take Effect.** Co. Litt. 183. b.

A Grant ſhall include all Things pertinent to it.

**A Grant of Things ſhall include all Things whatſoever, without which the Grant cannot be** (b) **enjoyed.** Hob. 234.

This muſt be Things incident and neceſſary.

(b) This is to be intended of Things incident, and directly neceſſary; as if I give the Fiſh in my Pond, you may fiſh with Nets, but you ſhall not cut the Banks, to lay the Water dry; if I grant and reſerve Woods, it implies a Liberty to take and carry them away. *Hob.* 234. 2 *Roll. Abr.* 60.

How a precedent Condition ſhall take Effect.

**Where there is a Condition precedent to a Grant, it ſhall not take Effect until the Condition precedent** (c) **be performed.** Cr. El. 219. pl. 7.

(c) *Conditio precedens*, ſays my Lord *Coke*, *adimpleri debet priuſquam ſequatur effectus.* Co. Litt. 201. a.

# Grants.

The four Incidents for the increaſing of an Eſtate by Force of a Condition precedent.

The Increaſing of an Eſtate by Force of a Condition precedent, ought to have four Incidents.

1. A particular Eſtate, as a Foundation for the Increaſe of the greater Eſtate.

2. Such Eſtate muſt continue in the Leſſee or Grantee, until the Increaſe ſhall happen.

3. That this ought to be when the Contingency happens, otherwiſe it ſhall never veſt.

4. The particular Eſtate and Increaſe ought to take Effect by one and the ſame Deed, or by ſeveral Deeds delivered at the ſame Time, and not by ſeveral Deeds at ſeveral Times. 8 *Rep.* 75. *a.*

A Grant to *B. Habendum* after his Death, is void, and why.

If A. by Deed of Feoffment gives to B. Habendum after the Death of A. to B. and his Heirs, this is a void Deed; becauſe A. cannot reſerve to himſelf a particular Eſtate; alſo it is to commence in futuro, which cannot be by the Rules of Law. Co. Litt. 48. b. Cr. El. 254, 255. pl. 27. Litt. ſect. 374.

One cannot take any Thing, who is not Party to the Deed, but by Remainder.

A Man cannot take any Thing but in Remainder, unleſs he is Party to the Deed. See Raym. 150, 151. C. Litt. 378. b.

Lands in Poſſeſſion cannot paſs by a Grant of a Reverſion, but *econtra* they may.

Lands in Poſſeſſion cannot paſs by the Grant of a Reverſion, but by the Grant of Lands, a Reverſion will paſs. * 2 Vaugh. 83.

* A Man grants or deviſes *Omnia terras & Tenementa ſua.* By the Word *Tenementa* a Reverſion will paſs. Bro. Tit. *Grants*, N° 30. 32 H. 6.

A Man may give what he hath not actually but potentially.

A Man may give and grant what he hath not actually but potentially, but if he hath it not actually nor potentially, the Grant is void. Hob. 132. 2 Roll. Abr. 47.

An uncertain Grant may be reduced to a Certainty.

A Grant, tho' in it ſelf uncertain, may be reduced to a Certainty, by the Act of the Party, or Act of the Law. (a) Hob. 174.

Lands granted by Patent for Lives, *Habendum a die datus*, is void.

Lands are granted by Patent for three Lives, * Habendum a die datus, this is void. (b) 5 Rep. 94. b.

* The Day of the Date is excluſive, ſo that it commences *in futuro*, viz. the next Day.

A Rent *de novo* granted out of Lands to commence *in futuro* is good.

A. Seiſed in Fee grants a Rent of 34 l. per Annum to B. and the Heirs of his Body, out of his Lands in C. payable at Michaelmas and Lady-day, the firſt Payment at ſuch of the Feaſts as ſhall happen after the Death of the Grantor, this is good. (c)

A Grant to two *& heredibus*, without *ſuis*, is void.

(a) But a Grant to two *& heredibus* without *ſuis*, is void for Uncertainty. *Hob.* 174.

A Freehold cannot commence *in futuro*.

(b) For it is againſt the Rules of Law, that a Freehold may commence *in futuro*. 5 *Rep.* 49. b.

Not good in a Grant of a Rent *in eſſe*.

(c) To commence *in futuro* is good in a Grant of a

Vaugh. 36, 173. Litt. Rep. 58, 59.

Rent *de novo*, not of a Rent *in eſſe*. *March* 31.

And why it is good.

Note; This paſſes by Grant, and not by Livery; for if it paſſed by Livery it would be void, it being to commence in futuro.

Note; In caſe of a Rent *in eſſe*, it is void, and why.

And were this a Grant in Fee of a Rent in eſſe, (a) the Grantor would have reſerved an Eſtate in himſelf, which is againſt the Rules of Law; but here the Rent is not in eſſe, and commenceth not till after the Death of the Grantor, ſo that it is a Grant of a Rent only from that Time.

The Difference between a Rent *in eſſe* and a Rent *de novo*.

(a) The Difference between a Rent *in eſſe* and a Rent *de novo* is this, *viz.* Where a Man is ſeiſed of a Rent in Fee, and he grants it over, this is a Rent *in eſſe*; A Rent *de novo* is where *A.* grants a Rent out of his Lands to *B.* and a Rent *de novo* may be granted *in futuro*. *March* 31.

There may be a Remainder upon a Rent *de novo* upon a Deviſe.

Alſo there may be a Remainder, upon a Rent *de novo*, by Deviſe, though it was objected that there could not, becauſe there cannot be a Remainder of that which is not: But it hath been adjudged, that where a Deviſe was of a Rent *de novo* to *A.* in Tail, Remainder to *B.* in Fee; this Rent ſhall paſs by way of Remainder, and not by executory Deviſe. *Sid.* 285. *Carter* 52. *Modern Caſes* 121.

A Rent cannot be granted out of a Rent, but a Parcel of a Rent may.

A Rent cannot be granted out of a Rent, but a Parcel of a Rent may be granted. *Bro. Abr.* Tit. *Grants.* N°. 3.

An Hundred granted by the King, *ſimul cum* the Leet, the Leet paſſes.

The King ſeiſed of a Hundred, to which a Court-Leet time out of Mind belong'd, grants the ſame to J. S. in Fee, ſimul cum the Leet: Here, tho' the Leet is not granted, but only mentioned in the ſimul cum, yet it is good, and the ſimul cum ſhall be taken to be a Copulative, and as well granted by that which comes after the ſimul cum as that which came before it (b). 8 H. 7. 4. a.

How the *ſimul cum* ſhall be taken.

How it is where it is *Habendum una cum.*

(b) Where a thing is granted *Habendum una cum* another thing, not mentioned in the Premiſſes, but coming only in the *Habendum*, after the thing granted, there it is void to grant more things than are in the Premiſſes; but good to paſs thoſe Things which are appendant or appurtenant. *Moor*, *fol.* 881.

How it is when put before the *Habendum*, and how when after.

If the ſimul cum is put before the Habendum, it is good; if after, not. 13 H. 7. 19. *b.* Moor 881.

A Man ſhall not by his own Act defeat or fruſtrate his own Grant. Hob. 41.

An Uſe cannot be limited to ariſe out of the Seiſin of a Stranger, who took nothing by the Deed.

Where one by Indenture between him and his Son of the one Part, and two Strangers of the other Part, in Conſideration of natural Love to his Son, did Give, Grant, and Enfeoff the two Strangers to the

Uſe of himſelf for Life, Remainder to the Son in Tail; and no other Execution of the Deed but Sealing and Delivery, this cauſed no Uſe: For the Uſe was limited to riſe out of the Seiſin of the Strangers, who took (a) no Eſtate by the Deed. 2 Ventr. 319. 1 Sid. 25. Le. 59, 60. Buckley's Caſe. See more of this in Title *Uſes*.

Where the Deed is void, no Uſe can ariſe.

(a) The Deed being void for Want of Livery, no Uſe could ariſe out of it. 5 *Rep.* 59, 60. *Buckley's Caſe in Ley* 59, 60. In Caſe of a Covenant to ſtand ſeiſed, where one of the Covenantees was of the Blood, the other a Stranger.

Where a Deed is void in the Frame of it, it ſhall not enure as a Covenant to ſtand ſeiſed.

Why it is void.

A Man gave, granted and confirmed Lands to his Son after his Deceaſe; this Deed had been void (b) if Livery had been made. Vide Cr. Eliz. 344, 345. Poph. 47, 48. 2 Roll. Abr. 7. Hob. 170. Co. Litt. 48. Moor 687.

(b) Becauſe there was no Execution of the Deed, to paſs an Eſtate, out of which an Uſe may ariſe.

Alſo reſolved (c) that it could not enure as a Covenant to ſtand ſeiſed; becauſe the Deed was void in the (d) Frame of it. 2 Ventr. 319. See Pitfeild and Pearce, March Rep. 50. Ley 59, 60.

A Freehold can't commence *in futuro*.

(c) A Freehold granted to commence *in futuro*, is void. 2 *Rep*. 52. *a*.

(d) In Parliament upon a Writ of Error. 2 *Ventr*. 319.

Why a Freehold cannot commence *in futuro*.

An Eſtate of Freehold cannot be granted to commence in futuro; but ought to take preſently in Poſſeſſion, Reverſion or Remainder: For if a Man makes a Leaſe for Life, to commence at a Day to come, he cannot make a preſent Livery to a future (e) Eſtate, 5 Rep. 94. b. Cro. Car. 547, 548. pl. 1.

Letters Patent amount to a Livery in Law.

(e) Letters Patent do amount to a Livery in Law, and therefore a Leaſe cannot be made by Patent for Life, to begin at a Day to come. 5 *Rep*. 94. *b*.

Where there needs no Livery to paſs a Freehold.

A Man makes a Gift in Tail to Leſſee at Will or Sufferance, it is good without Livery, * for Poſſeſſion countervails Livery. *Noy* 56.

* They being in Poſſeſſion.

A Rent granted to the Son by the Father, to commence after his Death, and good.

The Father grants a Rent to his Son for Life, to commence after the Death of the Father; allowed a good Grant. *Litt. Rep*. 58.

Where all Parties concerned in Point of Intereſt join in the Grant, it is good.

A. ſeiſed in Fee enfeoffs B. and C. to the Uſe of his Son upon certain Conditions. Before any Breach D. the Son grants a Rent-charge to E. for Life, and afterwards the Father and Son by Deed gave, granted,

& hac præſenti charta confirmed the Rent-charge to E. and afterwards the Condition is broken. By this Grant and Confirmation being all in one Deed, the Rent was never ſubject to the (a) Condition. 1 Rep. 147, 148.

(a) But remained good to E. for Life, notwithſtanding upon the Condition broken and Entry of A. the Eſtate was reveſted in A. Also here when all Parties concerned in Intereſt joined in a Grant of a Rent, the Grant is good. 1 Rep. 147. b.

Patron and Ordinary may charge the Glebe in the Time of the Vacation.

So if Patron and Ordinary charge the Glebe in the Time of the Vacation, this ſhall be binding, becauſe no others have any Intereſt therein during the Vacation, but them only. 1 Rep. 147. b.

Lands granted in the Pariſh of S. in the Poſſeſſion of B. they were in the Poſſeſſion of B. but in another Pariſh, and void.

Why void.

A. by Deed introlled conveys all his Lands in the Pariſh of S. in the Poſſeſſion of B. whereas they were then in the Poſſeſſion of B. but in another Pariſh, (viz.) D. (b) And this was held to be void; for although the laſt Certainty in the Poſſeſſion of B. was true, yet the firſt Certainty in the Pariſh of S. was falſe. (c) 3 Rep. 9. b. 2 Rep. 33. a. And therefore the Bargain and Sale was void; but it had been otherwiſe, if the true Certainty had been in the firſt Place. 3 Rep. 10. a. 1ſt Reſolution.

(b) Where a Grant is of *omnia illa Meſſuagia in tenura B.* lying in *D.* here, becauſe the Grant is general, *omnia illa, &c.* and is reſtrained to a certain Vill, the Grantee ſhall never have Lands out of the Vill, to which the Generality of the Grant refers. 2 *Rep.* 33. *a.* 3 *Rep.* 10. *a.* See *Cro. Jac.* 22. *pl.* 2. 680. *pl.* 17.

When the Addition of a falſe Thing ſhall never hurt the Grant.

But the Addition of a falſe Thing ſhall never hurt the Grant, when there is any Certainty before. *Cro. Car.* 548. *pl.* 1.

(c) But if he had bargained and ſold all the Lands in the Tenure of *B.* in the Pariſh of *S.* there it had been good, notwithſtanding the Addition of the Falſity of the Pariſh; for *Utile per inutile non vitiatur.* 3 Rep. 10. *a.*

A Man by Deed inrolled, for Money gives and grants a Rent to B. and his Heirs, this is good without the Words *Bargain and Sell.*

If a Man by Indenture introlled, for a certain Sum of Money gives and grants a Rent to one and his Heirs, without the Words Bargain and Sell, the Rent will paſs by this as a Bargain and Sale without (d) Attornment. Cro. El. 166. pl. 2.

(d) But Attornments are now gone by the 4 & 5 *Anne.*

A Man grants all his Trees in his Wood, the Grantee may cut them down, and carry them away.

A Man makes a Grant of all his Trees in his Wood, the Grantee may cut them down, and come with Carts, and carry them away. 11 Rep. 52. a. 4 Rep. 62. 5 Rep. 11. Hob. 234. 2 Roll. Abr. 60.

By a Grant of his Woods the Soil paſſes, but in a Leaſe of Lands, excepting his Woods, the Soil is not excepted.

A Man makes a Grant of his Woods; by this the Soil ſhall paſs: But if a Man makes a Leaſe of his Land, excepting his Woods, there the Soil is not excepted. Bro. Tit. Grants 167.

A Man grants and lets his Manor, and all Timber growing there, except ſix Trees; here the Word *Grant* is no more than a Demiſe of the Trees.

A Man grants and to Farm lets his Manor, and alſo all Timber Trees growing upon the ſame (with an Exception of ſix Oaks) to be taken during the Term, with Liberty to fell and ſell; here the Words are but a Demiſe of the Trees, they being joined with the Words, Demiſe and to Farm Let; and no Property paſſed tho' there were the Words, with Liberty to fell and ſell. Moor, Caſe 1117.

Where a Man ſells all his Trees, to be taken within five Years, the Vendee ſhall not take them after the five Years: But otherwiſe it is, where the Taking is limited by way of Covenant.

A Man ſells all his Trees, to be taken within five Years after; there the Vendee ſhall not take them after the five Years expired: But if the Time of Taking is limited by Way of Covenant for a certain Time, be the Covenant on the Part of the Grantor or Grantee, this ſhall not reſtrain the Grantee from having of them at any Time, as well after as within the five Years; but the Party may have his Action of Covenant for the Diſturbance. Moor, Caſe 1236.

A Grant of all Woods and Underwoods, ſhall not be cut a ſecond Time.

A Grant is made for Life, of all Woods and Underwoods ſtanding and growing, &c. When once the Grantee hath cut down the Underwoods, he ſhall not cut again in the ſame (a) Place. 3 Leon. Caſe 19, 57, 79. Moor, Caſe 57.

A Grant of all Woods that ſhall grow is void, and why.

A Man grants all his Wood that ſhall grow; it is a void Grant; becauſe a Man cannot grant that which is not in eſſe at the Time of the Grant. 3 Leon. Caſe 57. And of the ſame Opinion was Holt Chief Juſtice, upon a Trial in Middleſex by Niſi Prius.

Apple-Trees do not paſs by a Grant of all Woods and Trees.

If I grant all my Woods and Trees, Apple-Trees ſhall not paſs. Hob. 304.

A Grant of ſo many Years of his Term as ſhall be to come at his Death, is void.

A Man poſſeſs'd of a Leaſe for forty Years grants to B. ſo many of the Years as ſhall be to come at the Time of his Death; this is void for the (b) Uncertainty. 1 Rep. 155. a. Raym. 27. Plo. Com. 520. b. So where a Man grants his Term, Habendum from the Death of the Grantor; there the Habendum is void, and the Term paſſes preſently. Plo. 529. b. per Dyer.

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(a) For the Underwoods at the ſecond Cutting were not ſtanding and growing at the Time of the Grant.

Where a Term is granted *Habendum* after his Death, how it is to be.

(b) A Man grants a Term; *Habendum* after his Death, this paſſes by the Premiſſes: For they are ſufficient to carry it, and the *Habendum* ſhall not utterly deſtroy it. *Cr. El.* 255. *pl.* 27. *Hob.* 171, 174. See *Plo.* 520. *b.* That the *Habendum* ſhall be void. *Vide Salk.* 346, 347.

A Grant of his Term after his Death is void: But where he grants it *Habendum* after his Death, the *Habendum* ſhall be void, and it paſſes by the Premiſſes.

A Leſſee for Years grants his Term after his Death; the Grant is void. *Hob.* 171. But where he grants all his Term, Eſtate and Intereſt; *Habendum* immediately after his Death, the *Habendum* was adjudged to be void, and the Premiſſes were held ſufficient to paſs the intire Term to the Grantce preſently. *Plow. Com.* 520. *a.* *Dy.* 272. *pl.* 30. *Cro. Car.* 155. *pl.* 3. 1 *Salk.* 346.

Where there is no Eſtate expreſs'd in the Premiſſes, but there is in the *Habendum*, this is void.

If no Eſtate is expreſſed in the Beginning of a Deed, but only an implied Eſtate for Life, and by the *Habendum* of the Grant an expreſs Eſtatc is limited, this controlls the implied Eſtate for Life; and if this is void and repugnant, all is void. 2 *Rep.* 53. *b.* *Cro. El.* 254, 255. *pl.* 7. *Hob.* 171. 2 *Roll. Abr.* 66. *Moor pl.* 591. *Cr. Eliz.* 451, 585. *Moor* 881. *contra.*

Leſſee for Ninety-nine Years demiſes for twenty Years to commence from his Death, the Leſſor dies, this was held to be a good Leaſe, and why.

**A Man hath a Leaſe for ninety nine Years, and demiſes the Land for ſeventy Years, to commence from his Death, and afterwards the Leſſor (who was the firſt Leſſee) dies; and this Leaſe to commence after his Death was adjudged good upon this Diverſity,** (viz.) **he demiſed the Land,** Habendum **after his Death for ſeventy Years, in which there is a ſufficient Certainty; but where he grants ſo much of his Term as ſhall be arrear at the Time of his Death, this is altogether * incertain in the** (a) **Grant it ſelf.** 1 Rep. 155. a. Cro. El. 287. pl. 2.

* And void for the Incertainty. 1 *Rep.* 155. *a.*

A Rent granted to B. and his Heirs, *Habendum* to him and his Heirs, for the Life of C. this is but an Eſtate for Life deſcendible.

**A Rent was granted out of Land to A. and his Heirs,** Habendum **to him and his Heirs, to the Uſe of him and his Heirs, for the Life of J. S. This is but an Eſtate for Life deſcendible, not a Fee-ſimple.** Moor, Caſe 1227. 2 Roll. Abr. 66. 1 Browul. 169. 1 Bulſ. 135.

Eſtates granted, when Fee ſimple, and when for Life.

**If Lands are granted to a Man, To hold to him for ever, or to him and his Aſſigns for ever, it is only an Eſtate for Life; the Word** Heirs **being wanting to make it Fee-ſimple** (b) **and an Inheritance.** Co. Litt. 19.

(a) There is a Diverſity between a Covenant or other Agreement which is perfect and certain, altho' it takes Effect in Poſſeſſion upon a future Matter precedent, and a Covenant and Agreement incertain, which is to be reduced to a Certainty by future Matter *ex poſt facto*; for in the one Caſe, the Intereſt or Eſtate in the Land is bound preſently, and in the other not. 1 *Rep.* 155. *b.*

(b) Where Lands are given or granted to a Man and his Heirs for ever, it is a Fee-ſimple: And if to one, and the Heirs of his Body, *&c.* it is an Eſtate-tail. *Litt.* 1. 14, 16. A Grant to a Corporation, and their Succeſſors, is a Fee-ſimple.

Where a Demiſe can never take Effect.

Where a Demiſe depends upon a Contingency precedent, and upon a meer Uncertainty, ſo that until this happens, the Intereſt or Term intended to be demiſed or granted, is not certain, nor the Land bound with it, the Leaſe can never take Effect; for it cannot veſt in the Executors or Adminiſtrators. 1 Co. 156. a.

Choſes in Action not grantable over.

Choſes in Action are not grantable over; as a Contract, a Bond-Debt, (a) Annuities for Life, Common (b) for Life or Years, Eſtovers uncertain, Leaſe at Will. 2 Roll. Abr. 45, 46. But they may be aſſigned to the King, and he or his Grantee or Aſſignee may ſue in their own Name. 1 Williams 252, 253.

Leſſee for Years may grant over his Intereſt before Entry.

If a Leaſe for Years is made, the Leſſee hath ſuch an Intereſt, that he may grant it over before Entry. Co. Litt. 46. b. 2 Roll. Abr. 47.

A Man grants his Manor of *D. in Com. S.* which Manor lies in two Counties; only that *in Com. S.* paſſeth; but otherwiſe when the Words are, All other his Lands in *England*, Parcel of his Manor, there all paſſes.

A Man grants his Manor of D. in Com. M. which Manor extends into another County; only that Part of the Manor in Com. M. paſſes: But if he grants his Manor of D. in Com. M. and all other his Lands in England, Parcel of his Manor, this in the other County paſſes alſo. 2 Roll. Abr. 50.

How it is where the Word *Pro* is in the Grant.

A Man grants two hundred Fagots, to be taken out of his Lands, or Twenty Shillings pro iiſdem out of the ſaid Lands: Habendum the Fagots or Twenty Shillings to him or his Heirs, with a Clauſe of Diſtreſs for one or the other at the Grantee's Election; here the Fagots paſs preſently in Intereſt to the Grantee before Election, with a Power to elect to have the Twenty Shillings, but the Twenty Shillings doth not paſs in Intereſt before Election, for the Grant is pro iiſdem, (viz.) if he will not have the Fagots. 2 Roll. Abr. 47.

A Poſſibility cannot be granted over, nor deviſed.

A Poſſibility cannot be granted over. 4 Rep. 66. b. Dyer 116. 10 Co. 47. b. Raym. 146. 1 Sid. 188. So where a Man deviſes the Benefit of his Leaſe to A. his Wife, for ſix Years, and that J. his Son, if he comes home, ſhall have the Reſidue of the Term, and if he comes not home in ſix Years, then W. ſhall have it till J. comes home. W. cannot deviſe or grant this Poſſibility that he hath within the ſix Years, for he hath not any Intereſt till the ſix Years are paſt. 2 Roll. Abr. 49.

Livery is made upon a Bargain and Sale, the Deed is not inrolled; this ſhall paſs as a Grant; and be ſo pleaded.

A Man bargains and ſells in Fee, and makes Livery, the Deed is not inrolled, yet this ſhall paſs as a Grant, and be ſo pleaded: For a Bargain includes a

(a) But Bonds may be aſſigned, with Power of Attorney to receive and ſue for the Debt in the Aſſignor's Name. *Wood's Inſt.* 282.

(b) *Sans Nomber* may.

Grant. Noy's Reports *66*. Oſmond's and his Wife's Caſe.

Where no Eſtate is limited.

If a common Perſon grants any Thing, that lies in Grant, without Limitation of any Eſtate, by the Delivery of the Deed a Freehold paſſes: But if the King make ſuch a Grant, it is void for Uncertainty. Dav. Rep. 45.

Grants of the King, when void; for the Benefit of the Succeſſor.

In the King's Grants, the Law takes Care to preſerve the Inheritance of the King for the Benefit of the Succeſſor. And the King's Grants may be void by Reaſon of Incertainty, &c. But where there is a particular Certainty preceding, they ſhall not be deſtroyed by what follows: And there is a Diſtinction where a Miſtake of Title is prejudicial to the King, and when it is in ſome Deſcription of the Thing, which is ſupplemental only. 2 And. 154. 12 Rep. 46. 1 Mod. 195.

Where the King is deceived.

If the King is deceived in his Grant, as where it contains more than was intended to be granted; or if there be any Deceit in the Conſideration, ſuch Grant is void. 5 Rep. 94.

What Grants of the King may be reſumed.

The King cannot grant a Prerogative of Power ſo, but that he may reſume it; but otherwiſe it is of a Grant of an Intereſt. Skinn. Rep. 236.

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## Habendum.

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# Habendum.

What is the Office of the Premiſſes in a Deed.

THE Office of the Premiſſes in a Deed is to expreſs the Grantor, the Grantee and the Thing granted, and the Habendum ſhall be to declare the Eſtate which ſhall be in the Deed. See 3 Leon. Caſe 60. 3 Leon. fol. 33, 34.

What is the Office of the *Habendum*.

* But it cannot abridge the Thing granted. *Mo.* Caſe 1236.

The Office of the Habendum is to limit* the Eſtate; (a) ſo that the general Implication of the Eſtate which paſſes by Conſtruction of Law, by the Premiſſes, is always controlled and qualified by the Habendum. 2 Rep. 55. a. b. Cr. Eliz. 254. Hob. 171. 2 Roll. Abr. 66.

A Grant by Indenture, without expreſſing to whom, though it be *Habendum* to B. who is Party to the Deed, is void.

(a) A Bargain and Sale by Indenture without expreſſing to whom, although it were *Habendum* to *A. B.* who is Party to the Deed, is not good: Becauſe the Office of the *Habendum* is only to limit an Eſtate, and not to give any Thing, and there ought to be Grantor and Grantee in the Premiſſes of the Deed, otherwiſe it is void. *Cr. Eliz.* 903. *pl.* 6. 585. *pl.* 15. *Moor*, *Caſe* 1236.

The Premiſſes are void without a Grantor and Grantee in them.

Tho' the *Habendum* be void, yet no Eſtate of Freehold ſhall paſs by Implication againſt the expreſs Limitation of the Party.

And although the Habendum is void, and ſo in Effect no Habendum, yet no Eſtate of Freehold ſhall paſs by Implication of Law, againſt the expreſs Limitation of the (b) Party. 2 Rep. 55. a. b. Hob. 171.

The *Habendum* ſhall never introduce a Stranger to the Deed.

(b) Neither ſhall the *Habendum* ever introduce one who is a Stranger to the Premiſſes, 3 *Leon. Caſe* 60. to take as a Grantee, but he may take by Remainder. *Raym.* 145. See *Litt. ſect.* 374. *Hob.* 313, 314. 2 *Roll. Abr.* 68. *Cr. Ja.* 564.

No Freehold can commence *in futuro*.

No Limitation of the Party can make a Freehold commence *in futuro*. 2 *Rep.* 55. *a. b.*

Tenant in Fee cannot grant his Eſtate, *Habendum* after his Death.

Tenant in Fee cannot grant his Eſtate, *Habendum* after his Death; for then he would have a particular Eſtate in himſelf,

ſelf, againſt the Rules in Law. *Cro. Ja.* 376. *pl.* 2. and *Hogge* and *Craſs*, *Cr. Eliz.* 254. *pl.* 27. and 255. *pl.* 27.

How it is where no Eſtate is expreſt in the Beginning of a Deed, and an expreſs Eſtate is limited by the *Habendum.*

When no Eſtate is expreſt in the Beginning of a Deed, but only an implied Eſtate for Life, and by the Habendum an expreſs Eſtate is limited, this controlls the implied Eſtate for Life; (a) and if this is void and repugnant, all is void; (b) but if there is an expreſs Limitation in the Beginning, if the Habendum is repugnant, the Habendum is void, and the firſt is good. Cro. Eliz. 254, 255. pl. 27. 2 Rep. 23. b.

(a) Sometimes the *Habendum* gives an Eſtate, where nothing was given before. *Plow. Com.* 166. *a.*

Sometimes the *Habendum* gives an Eſtate where none was given before.

Sometimes it gives to a Perſon not named before. *Ibid.*

Sometimes to a Perſon not named.

And ſometimes it will alter the Eſtate given in the Premiſſes. *Ibid.*

Sometimes it will alter the Eſtate in the Premiſſes.

It is the Office of the *Habendum* to reſtrain and limit the general Eſtate in the Premiſſes. *Cart.* 173. 2 *Roll. Abr.* 65. 2 *Co.* 55. *a.* 9 *Co.* 47.

A Diverſity between an Eſtate implied in the Premiſſes, and an Eſtate expreſt.

There is a Diverſity between an Eſtate implied in the Premiſſes, and an Eſtate expreſs'd. For if *A.* grant a Rent to *B.* generally, this by Implication and Conſtruction of Law, is for Life: But if the *Habendum* is for Years, this is good, and qualifies the Generality and Implication of the Premiſſes. 2 *Rep.* 14. *a.* *Hob.* 170. *Co. Litt.* 183. 2 *Co.* 24, 55. 2 *Roll. Abr.* 65, 66. *Cr. Eliz.* 254. 8 *Co.* 154.

A Man gives to one and his Heirs, *Habendum* for Years or Life, this is void; and the Deed ſhall take Effect by the Premiſſes.

(b) Vide *Perkins* 34. *a.* That if a Man enfeoff another, and in the Premiſſes he gives to him and his Heirs, *Habendum* to the Feoffee and his Heirs for twenty Years or Life, this is void; and the Deed ſhall take Effect by the Premiſſes: For by the Premiſſes and Livery a Fee is given. And when Livery is made, it ſhall take moſt ſtrong againſt the Feoffor, and paſs by the Livery; and the *Habendum* ſhall be void. 2 *Rep.* 24. *a.*

A Livery ſhall be moſt ſtrongly againſt the Feoffor.

An *Habendum* contrary to the Premiſſes is void.

An *Habendum* contrary to the Premiſſes of a Deed, is repugnant and void; as if a Man in the Premiſſes gives Land to one and his Heirs, *Habendum* for Life, it is void, 2 *Rep.* 23. *b.* 24. *a.* and the Premiſſes ſhall ſtand.

If I enfeoff *A.* and *B.* of two Acres, *Habendum* the one Acre to *A.* the other Acre to *B.* the *Habendum* is void; for each of them is excluded from one Acre which was given him by the Premiſſes. 3 *Leon. Caſe* 178. *fol.* 126. But ſee *Hob. Rep.* 172.

A Grant of a Term, *Habendum* after his Death, the Premiſſes ſhall carry it.

If a Man grants a Term, *Habendum* after his Death, this paſſes by the Premiſſes; for the Premiſſes are ſufficient to carry it; and the *Habendum* ſhall not deſtroy it. *Cro. Eliz.* 255. *pl.* 27. *Dyer* 272.

Where the *Habendum* ſhall ſtand when it is of leſs Eſtate than is limited in the Premiſſes.

But had it been where, to an Eſtate limited by the Premiſſes, a Ceremony is requiſite to the Perfection of the Eſtate, and nothing requiſite to the Eſtate limited by the Habendum, but only the Delivery of the Deed; there, though the Habendum be of leſs Eſtate than is mentioned in the Premiſſes, the Habendum ſhall ſtand. 2 Rep. 24. a.

A Thing limited before the *Habendum*, need not to be named again in the *Habendum*.

When a Man limits a thing before the Habendum, and afterwards ſays, Habendum for Years or Life, or in Fee, and doth not name the thing in the Habendum; (a) this ſhall refer to the thing mentioned before the Habendum, and need not be repeated again. Plow. Com. 196. b. 2 Roll. Abr. 45. 2 Co. 55. a. 9 Co. 47. For the Office of the Premiſſes is to expreſs the Certainty of the thing granted, and the Habendum to expreſs the Quantity of the Eſtate. Ibid.

(a) *Note*; The Particular of the Land need not be named over again.

The Office of the Premiſſes is to expreſs the Certainty, and the *Habendum* to qualify the Eſtate.

The *Habendum* may enlarge the Premiſſes;

To a Man and the Heirs of his Body, *Habendum* to him and his Heirs, he hath an Eſtate-Tail and Fee expectant.

The Habendum may enlarge the (b) Premiſſes. Ch. Juſtice Jones, Rep. fol. 4. 8 Rep. 154.

(b) Lands are given to one and to the Heirs of his Body, Remainder to him and his Heirs, he hath here an Eſtate-Tail, and Fee expectant. *Cart.* 173.

and alſo abridge them.

*Habendum* may alter, abridge, or fruſtrate what is in the Premiſſes.

The Habendum may abridge (c) the Premiſſes. Jones ibid. See Moor, Caſe 1236.

(c) The *Habendum* may alter, abridge, or fruſtrate that which is in the Premiſſes. *Hob.* 171. See *Bridgman*, where if a Grant be made to One and his Heirs, *Habendum* for Life; the *Habendum* is void. *Bridgm.* 101. *Plow.* 153.

It may explain the Premiſſes.

The Habendum may explain the Premiſſes. Jones ibid. and Dyer 160.

It may make void the Premiſſes.

The Habendum may make void the Premiſſes. Jones ibid. and Buckley's Caſe, 2 Rep. 55, and 23, 24.

Where it ſhall be an Explanation of the Premiſſes.

And where a Prebendary demiſes to T. S. and his Heirs, (d) Habendum to him and his Heirs for three Lives; this is an Explanation of the Premiſſes, that the Leſſee and his Heirs ſhall have ſuch an Eſtate as is mentioned in the Premiſſes;

(d) It was urged that the Premiſſes did paſs a Fee-ſimple, and that the *Habendum* ſhall not abridge it to an Eſtate for Lives. *Jones* 4.

A Leaſe to *A.* and his Aſſigns, *Habendum* to him during his and the Lives of *B.* and *C.*

A Leaſe is made to *A.* and his Aſſigns, *Habendum* to him during Life, and the Lives of *B.* and *C.* Here is no Merger of the Lives of *B.* and *C.* For the Leſſee hath but one Eſtate, with this Limitation, (*viz.*) during his and the two others Lives. 5 *Rep.* 13. *a.*

miſſes; (a) which is but for three Lives, as in the Habendum. Jones 4. 2 Keb. 863.

A Grant in the Premiſſes, *Habendum una cum* another Thing not belonging to it, that mentioned in the *Habendum* will not paſs.

Where a Man grants one thing in the Premiſſes, Habendum una cum another, which is no Part of, or belonging to it; that mentioned in the Habendum will not paſs. Hob. 161. See Moore, Caſe 1236.

The *Habendum* not purſuant to the Premiſſes is void.

The Habendum which is not purſuant to the Premiſſes is void; as a Grant of a Manor, Habendum a Rent parcel of the Manor. Plow. Com. 151. b. 152. a.

How it is where Lands are given to two, *Habendum* to the Uſe of them and the Heirs of their Bodies.

Where an Eſtate is given to two, Habendum to the Uſe of them, and the Heirs of their Bodies; this is no Limitation of the Uſe, nor is the Uſe to be executed by the Statute: But it is a Limitation of the Eſtate it ſelf to them and the Heirs of their Bodies; and they are in by the Courſe of the (b) Common Law. Cro. Car. 230, 231. pl. 11.

**A Party to the Deed, not named in the Premiſſes, cannot take by the *Habendum* at the Common Law; but ſhall by the Statute of Uſes.**

A Leaſe to two, *Habendum* to one and a third Perſon, is void.

A Leaſe is made to two, Habendum to one of them and to a third Perſon; this is void as to the third Perſon, and the other two ſhall have it. 3 Leon. Caſe 60.

A Leaſe to *A.* for his Life, *Habendum* to him and his Aſſigns, for the Lives of *C. D.* and *E.* he hath an Eſtate for four Lives; and it doth not determine upon his Death, but there will be an Occupancy,

Where a Leaſe is made to T. S. Habendum to him and his Aſſigns, for his own Life, and the Lives of A. B. and C. * he hath an Eſtate for four Lives, and it doth not determine upon his Death; but there will be an Occupancy if a Proviſion is not made (c) againſt it. Cro. Eliz. 182. pl. 3.

**The Proviſion made againſt Occupancy, by the Statute of Frauds and Perjuries, 29 *Car.* 2. *cap.* 3. *ſect.* 12.**

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(a) *Viz.* To him and his Heirs for the three Lives.

(b) A Feoffment is made between *A.* of one Part, and *B.* and *C.* of the other Part, whereby *A.* enfeoffs *B. Habendum* to *B.* and *C.* their Heirs and Aſſigns, to the Uſe of *B.* and *C.* their Heirs and Aſſigns for ever: Here becauſe *C.* was not named in the Premiſſes, he cannot take by the *Habendum* at Common Law; but the Uſe being limited to the Uſe of *B.* and *C.* and their Heirs, there they ſhall both take. 12 *Co.* 55. *Poph.* 126.

* Here muſt be Livery.

(b) *Vide* the Proviſion made in the Statute of Frauds and Perjuries, 29 *Car.* 2. *c.* 3. *ſect.* 12. which ſays, that from henceforth any Eſtate *pour auter vie* ſhall be deviſeable by Will in Writing, ſign'd by the Party ſo deviſing the ſame, or by ſome other Perſon in his Preſence, and by his Directions, atteſted and ſubſcribed in the Preſence of the Deviſor, by three or more Witneſſes. And if no ſuch Deviſe thereof be made, the ſame ſhall be chargeable in the Hands of the Heir, if it ſhall come to him by reaſon of a Special Occupancy, as Aſſets by Diſcent; as in caſe of Lands in Fee-ſimple; and in caſe there be no Special Occupant thereof, it ſhall go to the Executors or Adminiſtrators of the Party who had the Eſtate, by Virtue of the Grant, and ſhall be Aſſets in their Hands.

A Leaſe *Habendum a nativitate* of our Lord, and ſays not *Feaſt*.

A Leaſe is made Habendum from the Nativity of our Lord God laſt paſt, (omitting Feaſt-Day:) Quære, If this Leaſe is void, or ſhall commence from the Delivery. 1 Sid. 461. 1 Vent. 84. 2 Keb. 656.

A Leaſe for forty Years, *Habendum* after the Expiration of a Leaſe made to *J. S.* whereas there was no ſuch Leaſe; the Leaſe for 40 Years ſhall commence preſently.

A Leaſe is made Habendum for 40 Years after the Expiration of a Leaſe made to another; whereas in truth there is no ſuch Leaſe. This Leaſe for forty Years ſhall commence preſently. Vaugh. 73, 74, 80, 81. 1 Sid. 460. 1 Bendl. pl. 72. 1 And. 3. Dyer 116. pl. 70. Bro. Tit. Leaſes 62. Plowd. 148. 1 Roll. Abr. 849. Cr. Car. 399. 1 Jones 355. Co. Litt. 46. b. 1 Lev. 77. 1 Keb. 360. 2 Leon. 11.

To two, *Habendum* the one Moiety to one, the other to the other, and good.

Lands given to two, Habendum the one Moiety to one, the other Moiety to the other, is good. Hob. 172. Co. Litt. 190. b. 183. b.

A Leaſe to *B. Habendum* to B. and alſo to D. for their Lives, and the Life of the longer Liver; only *A.* can take, he being the Party to the Deed; the reſt in the *Habendum* can take only by way of Remainder; but not here for Incertainty.

A. ſeiſed in Fee leaſes to B. Habendum to B. and alſo to D. and E. (a) for their Lives, and the Life of the longer Liver of them ſucceſſively. None can take immediately but A. becauſe he is the only Party to the Deed, and the reſt are only named in the Habendum: For they being only named in the Habendum, cannot any ways take, but by way of Remainder, which they cannot do, becauſe of the Incertainty who ſhould take. Raym. 143. Hob. 313, 314.

Where an Eſtate-tail in the Premiſſes, and a Fee-ſimple expectant in the *Habendum.*

If an Eſtate-Tail is expreſſed in the Premiſſes of a Deed, Habendum to him and his Heirs, to whom the Eſtate-Tail is given; by this he ſhall have an Eſtate-Tail by the Premiſſes, and a Fee-ſimple expectant upon it by the Habendum. Perk. ſect. 168.

Where the Words in the *Habendum* ſhall be taken *diſtributive.*

Where the Words of the Habendum ſhall be taken diſtributive, reddendo ſingula ſingulis. 1 Saund. 183, 184, 186. 5 Rep. 7. Mo. pl. 340. Cr. Eliz. 199. 2 Leon. 105.

A Leaſe *Habendum* from the Date of the Indenture is from the Time of the Delivery; but *Habendum* from the Day of the Date excludes the Day whereon dated.

A Leaſe Habendum from the Date of the Indenture is from the time of the Delivery, and commences the ſame Day; but Habendum from the Day of the Date excludes the Day whereon (b) dated. Cro. Jac. 135. pl. 10.

Where the Premiſſes are two Acres, and the *Habendum* but of one, it's void, and why.

If the Premiſſes of a Deed are of two Acres, and the Habendum is but of one, and the Eſtate not enlarged thereby, it is a void Habendum, becauſe it excludes the Donees of Part of that which was (c) given. Perk. ſect. 175.

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(a) *Habendum* to one, not Party to the Deed, is void by way of *Habendum* the Eſtate, but good by way of Remainder. *Hob.* 313, 314. 2 *Roll. Abr.* 68. *Cr. Ja.* 564.

(b) The Difference where *Habendum* is from the Date, and from the Day of the Date.

(c) If one leaſe two Acres of Land; *Habendum* one Acre for Years, by this there is a Leaſe of this Acre for Years, and of the other but at Will. For where an *Habendum* is uſed for a Limitation, there it cannot be void; but the whole Leaſe will be void: As if one leaſe Land to *J. S. Habendum* to *J.D.* for Years, this is void in all. *Moor, Caſe* 160.

Two Acres are leaſed, *Habendum* one for Years, and nothing ſaid of the other, it is a Leaſe for Years of one Acre, and at Will for the other.

Where a Limitation to one and his Heirs, *Habendum* for Life, is void, and where not.

**Where Things lie in Grant, and take Effect by the Delivery of the Deed, without other Ceremony, a Limitation to one and his Heirs,** Habendum **for Life, is void.** (a) **But where ſome Ceremony is requiſite to the Perfection of the Eſtate granted by the Premiſſes,** (b) **and to the Eſtate limited by the** Habendum, **nothing is requiſite, but only the Delivery of the Deed; there the** Habendum, **though it be of a leſſer Eſtate than is mentioned in the Premiſſes, doth not make it void, but it ſhall ſtand.** 2 Co. 23. b. 24. a. 1 And. 223. Owen 48.

Where a Rent or Common is granted in the Premiſſes in Fee, *Habendum* to the Grantee for Years, the *Habendum* is repugnant.

(a) Or where a Man grants a Rent or Common, *&c.* by the Premiſſes of the Deed, to the Grantee and his Heirs, *Habendum* to the Grantee for Life or Years, the *Habendum* is repugnant and void: For a Fee paſſes by the Delivery of the Deed: And therefore the *Habendum* for Life or Years, is void.

(b) As Livery, if a Fee-ſimple: For till Livery nothing but an Eſtate at Will paſſes.

# Jointreſs.

Who is a Jointreſs.

A Jointreſs is ſhe who hath an Eſtate made to her by her Huſband, for the Term of her Life, if ſhe ſurvives him, the ſame to commence immediately upon his Death, and is mentioned in the 27 H. 8. cap. 10. and if made after Marriage ſhe may wave it preſently after the Huſband's Death, and demand her Dower; but if made before Marriage ſhe cannot.

All Alienations made by the Wife of the Husband's Lands to be void. 11 *H.* 7. *cap.* 20.

By a Statute made Anno 11 H. 7. cap. 20. certain Alienations made by the Wife of the Lands of the deceaſed Huſband ſhall be void.

If any Woman who has any Eſtate in Dower, for Life, or in Tail, jointly with her Husband, or ſolely, or to her Uſe, in any Lands of the Inheritance, or Purchaſe of the Husband;

or given to the Husband and Wife in Tail, or for Life, by the Husband's Anceſtors, or others, ſeiſed to his or their Uſe;

being ſole, or with any other after Husband,

For certain reaſonable Conſiderations be it ordained, enacted and eſtabliſhed, by the King our Sovereign Lord, and by the Aſſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by Authority of the ſame, That if any Woman, which hath had, or hereafter ſhall have any Eſtate in Dower, or for Term of Life, or in Tail, jointly with her Huſband, or only to her ſelf, or to her Uſe, in any Manors, Lands, Tenements, or other Hereditaments of the Inheritance or Purchaſe of her Huſband, (a) or given to the ſaid Huſband and Wife in Tail, or for Term of Life, by any of the Anceſtors of the ſaid Huſband, or by any other Perſon ſeiſed to the Uſe of the ſaid Huſband, or of his Anceſtors, and have or ſhall hereafter being ſole, or with any other after taken Huſband,

Jointure of an Eſtate from the Wife's Anceſtor is not within this Statute.

(a) Where the Eſtate ſettled for Jointure comes from the Anceſtors of the Wife, and is not of the Purchaſe of the Husband, or his Anceſtors, it is not within this Statute, although it is in Conſideration of 100 *l.* paid by the Husband; and in Conſideration of Marriage had, and for the Preferment of the Blood of the

Husband, he covenants to ſtand ſeiſed, *&c.* *Cro. Car.* 244. *pl.* 5. *Co. Litt.* 366. *b.* *Cr. Ja.* 624. 1 *Jones* 13. *Palm.* 213, 218. 1 *Jones* 254. *Mo.* 93. *pl.* 231. 2 *And.* 45.

ſhall diſcontinue, alien, releaſe, or confirm, with Warranty, or by Covin, ſuffer a Recovery;

ſuch Recoveries, *&c.* to be void.

And that it ſhall be lawful for him to whom the Intereſt, Title, or Inheritance, after the Woman's Deceaſe, ſhall appertain, to enter into the Premiſſes.

band, diſcontinued or diſcontinue, aliened, releaſed or confirmed, alien, releaſe, or confirm with Warranty, or by Covin, ſuffered or ſuffer any Recovery of the ſame againſt them, or any of them, or any other ſeiſed to their Uſe, or to the Uſe of either of them after the Form aforeſaid; that all ſuch Recoveries, Diſcontinuances, Alienations, Releaſes, Confirmations and Warranties, ſo had and made, and from henceforth to be had and made, be utterly void, (a) and of none Effect: And that it ſhall be lawful for every Perſon and Perſons, to whom the Intereſt, Title or Inheritance, after the Deceaſe of the ſaid Woman, of the ſaid Manor, Lands, and Tenements, and other Hereditaments being diſcontinued, aliened and ſuffered to be recovered, after the firſt Day of December next coming, in the Form aforeſaid, ſhould appertain, to enter into all and every the Premiſſes, and peaceably to poſſeſs and enjoy the ſame in ſuch Manner and Form as he or they ſhould have done, if no ſuch Diſcontinuance, Warranty, nor Recovery had been had, nor made.

This expounds the Generalty of the Words of the precedent Branch;

ſo that they ſhall be utterly void, by the Entry of him who has the Title or Inheritance:

But the Warranty or Recovery is not void, but in Force againſt the Parties, and others, but thoſe only to whom the Inheritance ſhall belong.

(a) Altho' the firſt Branch makes the Diſcontinuance, Alienation, Warranty, and Recovery, utterly void, yet the enſuing Clauſe being annexed to this, with this Conjunctive, (And that it ſhall be lawful, *&c.*) expounds the Generalty of the Words of the precedent Branch; and therefore the Senſe of both together is, that they ſhall be utterly void, and of none Effect by the Entry of him to whom the Intereſt, Title, or Inheritance, after the Death of the Woman doth appertain. But the Diſcontinuance, Alienation, Warranty, or Recovery, are not void between the Parties, but ſhall ſtand in Force againſt them and all others, but thoſe only to whom the Title or Inheritance after the Death of ſuch Woman ſhould appertain; and thoſe only can make theſe void by their Entry. 3 *Rep.* 59. *b.* 60. *a.* *Hob.* 166.

And if the Heir in Tail convey the Land, and ſhe releaſe or confirm with Warranty, this Warranty is not reſtrained.

And the Intent of this Act is to reſtrain Women from diſcontinuing by Warranty and Recovery, in Bar of the Heir; but where the Heir in Tail conveys Land to others, and the Woman releaſes or confirms with Warranty, his Warranty is not reſtrained, it being only to perfect and corroborate the Eſtate made by the Tenant in Tail; and ſhall be intended to be for the Benefit, and not the Prejudice of the Heir.

Alſo the Wife might have joined with the Heir in Tail in a Fine, and barred his Iſſue in Tail; or elſe might have ſurrendered to the Heir in Tail; and he might have ſuffered a Recovery, and docked the Intail; ſo that they both having Power to bar the Tail, and the Remainder and Reverſion Expectant thereupon, it was never the Intent of the Act to reſtrain the Warranty of the Woman made to him who hath the Land, by Conveyance from the Heir in Tail. 3 *Rep.* 60. *b.*

And ſhe may join in a Fine with the Heir in Tail to bar his Iſſue, or ſurrender to him, that he may ſuffer a Recovery.

Alſo where the Heir in Tail ſuffers a Recovery in the Life of the Jointreſs, he hath diſabled himſelf by his own Act, to take the Advantage of the Forfeiture; and his Heir cannot do it: Becauſe his Father was *in Eſſe* at the Time of the Forfeiture, and could not enter. 3 *Rep.* 60. *a.* *Cr. Ja.* 175. *Tel.* 101. *Noy* 122. 2 *And.* 31.

Where an Eſtate is ſettled upon a Woman in Conſideration of Money paid, and alſo of a Marriage to be had, the Marriage ſhall be looked upon as the Conſideration.

An Eſtate ſettled in Conſideration of Money, and a Marriage to be had, the Marriage is the Conſideration.

And where the Husband is Tenant for Life, Remainder to the Wife in Tail, Remainder to himſelf in Fee, he together with his Wife makes a Feoffment, and they afterwards levy a Fine to the Feoffee, and the Iſſue enters, this is no Forfeiture; becauſe the Husband and Wife joined. *Cro. Jac.* 474. *pl.* 7.

Baron, Tenant for Life, Remainder to his Wife in Tail, Remainder to Baron in Fee; Baron and Feme make a Feoffment, and after levy a Fine to Feoffee, it is no Forfeiture.

A Jointreſs within this Act made a Leaſe for forty Years, * if ſhe ſo long lived, rendring a Pepper-Corn Rent, and afterwards levied a Fine *ſur conuſans de droit*; the Heir entered within the five Years, and brought his Ejectment; and upon a Special Verdict this Matter was found, and the Court gave Judgment for the Leſſee, who claimed under the Leaſe of forty Years, for that it was a good Leaſe, and untouched by the Fine. This was between *Waters* and *Rumſey*, in an Ejectment for Lands in *Monmouth*, of the Demiſe of *George Barrow*, Gent.

* Had it been a Leaſe for Life, tho' not warranted by the Statute, it had been a Forfeiture. 3 *Rep.* 50. *b.* *Vide Cro. Jac.* 618, 719. *pl.* 5.

A Jointreſs leaſes for 40 Years, if ſhe ſo long live, at a Pepper-Corn Rent, and after levies a Fine; the Leaſe is good and untouch'd by the Fine.

An Eſtate in Fee-ſimple conveyed to a Woman for a Jointure, is not any Jointure within the 11th of *H.* 7. which Act neither in the Letter or Intention, ever extended to Lands granted to a Woman in Fee-ſimple; for to reſtrain ſuch an Eſtate, which is in its Nature alienable, is repugnant and againſt the Rules of Law.

An Eſtate in Fee conveyed to a Woman for a Jointure is not within this Statute of 11 *H.* 7.

But an Eſtate in Fee-ſimple conveyed to a Woman for her Jointure, and in Satisfaction of her Dower, is a Jointure within the Statute of 27 *H.* 8. of Uſes. 4 *Rep.* 3. *a. b.*

But it is within the Statute of 27 *H.* 8.

And that if any of the ſaid Husbands and Women, or others ſeiſed to their Uſe, do make or cauſe any ſuch Diſcontinuance, *&c.*

**And over this be it ordained and enacted by the ſaid Authority, That if any of the ſaid Huſbands and Women, or any other ſeiſed, or that ſhall be ſeiſed to the Uſe of them, of the Eſtate fore-ſpecified, after the ſaid firſt**

firſt Day of December, do make or cauſe to be made, or ſuffer any ſuch Diſcontinuance, Alienations, Warranties, or Recoveries, in Form aforeſaid; that then it ſhall be lawful for the Perſon or Perſons, to whom the ſaid Manors, Lands or Tenements, ſhould or ought to belong after the Deceaſe of the ſaid Women, to enter into the ſame, and them to poſſeſs and enjoy according to ſuch Title and Intereſt as they ſhould have had in the ſame, if the ſame Women had been dead, and no Diſcontinuance, Warranty or Recovery had, as againſt the ſaid Husband during his Life; if the ſaid Diſcontinuance, Alienations, Warranties and Recoveries, be hereafter had by or againſt the ſaid Huſbands and Women, during the Coverture and Eſpouſal betwixt them.

That then he to whom the Lands ſhall belong, after her Deceaſe may enter and enjoy the ſame, during the Husband's Life.

Provided that the Woman may re-enter after her Husband's Death.

Provided always that the ſaid Women, after the Death of the ſaid Husbands, may re-enter into the ſame Manors, Lands and Tenements, and them to enjoy according to their firſt Eſtate in the ſame.

But if the ſaid Woman at the time of ſuch Diſcontinuance, &c. be ſole, ſhe ſhall be barred and excluded.

And over this be it ordained and enacted by the ſaid Authority, that if the ſaid Woman at the Time of ſuch Diſcontinuance, Alienations, Recoveries, Warranties, after the ſaid firſt Day of December, in Form aforeſaid to be had and made, of any of the Premiſſes, be ſole, that then ſhe ſhall be barred and excluded of her Title and Intereſt in the ſame, from thenceforth; and that the Perſon and Perſons, to whom the Title, Intereſt, and Poſſeſſion of the ſame ſhall belong after the Deceaſe of the ſaid Woman, ſhall immediately after the ſaid Diſcontinuances, Alienations, Warranties, and Recoveries, enter into the ſame Manors, Lands, Tenements, and other Hereditaments; and them to poſſeſs and enjoy according to his or their Title in the ſame.

And he to whom the Title, Intereſt, and Poſſeſſion belong after her Death ſhall immediately after the ſaid Diſcontinuances, &c. enter into and enjoy the Lands.

Provided not to avoid any Recovery before had, &c. But where the Husband and Woman, or one of them, is alive, or others to their Uſe, now have Intereſt and Title, &c.

Provided alſo that this Act extend not to avoid any Recovery, Diſcontinuance, or Warranty, after the Form aforeſaid, afore this Time had, made and ſuffered, but only where the ſaid Husband and Woman, or either of them, now being alive, or any other to their Uſe, now have Intereſt and Title to the ſaid Manors, Lands, Tenements, or other Hereditaments, aliened, diſcontinued, or ſuffered to be recovered, after the Form aforeſaid, and thereof now taking the Iſſues and Profits, or any other Perſon or Perſons to their Uſe.

Provided, not to extend to any Recovery had with the Heir next inheritable; or where he is aſſenting, or agrees to ſuch Recovery.

Provided alſo, that this Act extend not to any ſuch Recovery or Diſcontinuance, to be had, with the Heirs next inheritable to the ſaid Woman, or where he or they, next after the Death of the ſame Woman, ſhould have Eſtate of Inheritance in the ſame Manors, Lands or Tenements, be aſſenting or agreeable to the ſaid Recoveries, where the ſame Aſſent and Agreement is of Record* or Inrolled.

* See for this before.

Provided that ſuch Woman being ſole, or married, may give or ſell for her Life only.

Provided alſo, that it ſhall be lawful to and for every ſuch Woman being ſole, or married, after the Death of her firſt Husband, to give, ſell, or make Diſcontinuance of any ſuch Lands for Term of her Life only, (a) after the Courſe and Uſe of the Common Law, before the making of the preſent Act. Stat. 6 Ed. 1. 7. 32 H. 8. 36.

She may leaſe for twenty-one Years.

(a) She may make a Leaſe for twenty-one Years, and that ſhall be no Forfeiture. *Cr. Jac.* 688, 689. *pl.* 5.

A Jointure to bar Dower muſt have theſe Qualifications.

An Eſtate ſettled upon a Jointreſs before Marriage, which ſhall bar her of her Dower, per 27 H. 8. of Uſes, muſt have theſe following Qualifications.

It muſt be an Eſtate for Life at leaſt. 3 Rep. 2. a.

It muſt commence immediately after the Death of her Husband. 3 Rep. 2. a.

An Eſtate for Life, on Condition, is a Bar if ſhe accepts it.

An Eſtate for Life upon Condition is a Bar if the Wife accepts it; becauſe that is an Eſtate for Life. 3 Rep. 2. b. So if he makes the Eſtate durante viduitate, it is good. 3 Rep. 3. a.

It muſt be made for her ſelf; and be expreſs'd to be in Satisfaction of her whole Dower: And it may be made before or after Marriage. 3 Rep. 1.

A Jointure made before Marriage cannot be waived to take Dower.

If a Jointure is made before Coverture, ſhe cannot waive her Jointure, and take her Dower; but if it be made after Coverture, ſhe may.

But if before Marriage Lands are ſettled in Part, and after in full of her Jointure, ſhe may take the firſt, and alſo her Dower.

If Lands are conveyed to her in Part of her Jointure before Marriage, and after Marriage other Lands in full, here ſhe had not her full Jointure, but ſhall take her firſt Jointure Lands, and Dower together. 3 Rep. 3. a.

If a Woman conceal her Jointure, and brings Dower, ſhe ſhall loſe her Jointure.

Where a Woman has a Jointure and conceals it, and brings Dower, and recovers it; and then ſets up her Jointure, ſhe by this Practice ſhall be barred of her Jointure: And by bringing Writ of Dower for her Thirds, the Wife waives the Benefit of Entry into Lands ſo as to hold them in Jointure. 3 Rep. 5. a. b. Cro. Eliz. 128.

A Woman may enter on her Jointure, without Action,

and be endow'd on Eviction.

After the Death of the Husband, the Wife may enter on her Jointure, and is not driven to a real Action, as ſhe is to recover Dower by the Common Law; and upon a lawful Eviction of her Jointure, ſhe ſhall be endowed according to the Rate of her Huſband's Lands, whereof ſhe was dowable at Common Law. 1 Co. Inſt. 37.

If evicted of Part of her Jointure, ſhe ſhall have Dower *pro tanto.*

Alſo if an Eſtate in Jointure is ſettled upon a Woman, and ſhe is evicted of Part, ſhe ſhall have her Dower pro tanto. 3 Rep. 3. a.

Settlements in Lieu of Jointure, not made according to the Statute, are Jointures at Common Law, and no Bars to Claim of Dower.

A Wife joining with her Husband in Levying a Fine of her Jointure, ſhall not have Dower in other Lands.

If a Jointure is made of Lands, according to the Direction of the Statute of H. 8. before Coverture, and after the Huſband and Wife alien them by Fine; ſhe ſhall not have Dower in any other Lands of her Huſband: But it is otherwiſe where the Jointure is made after Marriage, when the Wife's Eſtate is waivable, and her Election of Chooſing comes not 'till the Huſband's Death. 1 Co. Inſt. 36. 1 Bulſ. 173. 1 Leon. 285. Dyer 358.

Jointure not forfeited by Treaſon of the Husband.

A Wife's Jointure ſhall not be forfeited by the Treaſon of the Huſband. Co. Litt.

Leaſe

# Leaſe and Releaſe.

## A Bargain and Sale for a Year.

A Bargain and Sale for a Year, to enable the Bargainee to take a Releaſe.

THIS Indenture, made the firſt Day of September in the 14th Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, and ſo forth, and in the Year of our Lord 1740.

(a) Between A. B. of F. in the County of S. Gent. of the one Part, and J. B. of A. in the ſaid County of S. Gent. of the other Part, Witneſſeth, That as well for and in Conſideration of the Sum of Five Shillings (b) of good and lawful

If the Leſſor is not in actual Poſſeſſion, he muſt enter, and ſeal, and deliver the Deed on the Land;

(a) No Perſon can make a Bargain and Sale for a Year, who hath not the actual Poſſeſſion at the Time of the Sale. If he hath it not before the Sale, he muſt enter upon the Land, and ſeal and deliver the Deed afterwards upon the Land to the Bargainee; and this puts the Bargainee into Poſſeſſion, and purges Diſſeiſins, *&c. Vide* Title *Entry. Carter* 161. *Cro. El.* 483. *pl.* 19, 446, 447. *pl.* 11. *Daliſon* 81. *pl.* 20. 3 *Lev.* 387. 1 *Lev.* 47, 270, 271, 272.

which puts Leſſee into Poſſeſſion, and purges Diſſeiſins.

Leſſor ſeiſed in Fee to make a Leaſe for Years, muſt give Poſſeſſion, or raiſe a Uſe.

Where a Man is ſeiſed in Fee, and makes a Leaſe for Years, unleſs he gives Poſſeſſion, and the Leſſee enters, he muſt raiſe a Uſe. 1 *Mod.* 263.

It is the beſt Way to make a Conſideration of five Shillings.

(b) The beſt Way to make the Matter clear, is to mention a Conſideration of Five Shillings, or ſome other Sum, tho' it be never paid; for where a Leaſe was made for a Year, by the Words Demiſe, Grant, and to Farm Let, rendering a Pepper-Corn Rent, it came to be a Queſtion upon a ſpecial Verdict, Whether the Releaſe could operate upon it? And againſt it it was objected, That the Releaſe was void, for that there was no Entry found, nor any Conſideration to raiſe an Uſe: All the

**ful Money of England, by him the ſaid J. B. to him the ſaid A. B. in Hand well and truly paid, before the Sealing and Delivery hereof, the Receipt whereof he the ſaid A. B. doth hereby acknowledge, and thereof and therefrom doth acquit and diſcharge the ſaid J. B. his Heirs, Executors, and Adminiſtrators, and every of them, for ever by theſe Preſents, as alſo for divers other good Cauſes and Conſiderations, him the ſaid A. B. hereunto moving, he the ſaid A. B. hath bargained and ſold, and doth by theſe Preſents bargain and ſell unto the ſaid J. B. his Executors, Adminiſtrators and Aſſigns** (a) **all that Meſſuage or Tenement,**

the Conſideration mentioned in the Reſervation being but a Pepper-Corn, which is not ſufficient, for that it is to be paid out of the Profits of the Land.

And *North*, Chief Juſtice, at firſt ſaid, That the Reſervation did ſeem to him not to be ſufficient to raiſe a Uſe, for that a Uſe muſt be raiſed out of the Land, and united to it before a Rent can reſult out of it.

*Wynham*, Juſtice, was of Opinion, That the Reſervation, tho' but a Pepper-Corn, would raiſe a Uſe.

The Court took Time to adviſe in it. *Barker* and *Keet*, 1 *Mod. Rep.* 262.

The Word *Grant* will make Land paſs by way of Uſe.

Reſervation of a Pepper-Corn is a good Conſideration to raiſe a Uſe.

Afterwards Judgment was given, that the Word *Grant* would make the Land paſs by Way of Uſe: And, That the Reſervation of a Pepper-Corn is a good Conſideration to raiſe a Uſe to ſupport a Recovery.

Alſo, that this Leaſe being within the Statute of Uſes, there need be no actual Entry to make the Leſſee capable of the Releaſe; for by Virtue of the Statute, he ſhall be adjudged to be in actual Poſſeſſion. 2 *Mod. Rep.* 252, 253.

Leaſe for Years, without Conſideration, the Leſſee hath no Eſtate till Entry; nor Leſſor any Reverſion; nor will a Releaſe operate to enlarge an Eſtate without Poſſeſſion: Nor can Leſſee bring Treſpaſs, but may bring an Ejectment.

(a) If a Man makes a Leaſe for Years without any Conſideration of Money, the Leſſee hath not any Eſtate till Entry; for before Entry he hath but an *Intereſſe Termini*, and no Poſſeſſion. 1 *Inſt.* 278. *a.* and 46. *b.* Neither hath the Leſſor any Reverſion till the Leſſee's Entry; nor will a Releaſe to him, which enures by Way of enlarging an Eſtate, operate without a Poſſeſſion: For before a Poſſeſſion there is no Reverſion. 1 *Inſt.* 270. *a. Cro. Jac.* 169. *pl.* 9. Neither can he bring Treſpaſs. 1 *Inſt.* 46. *b.* 270. *a.* 1 *Mod. Rep.* 262, 263. *Carter* 66. *Co. Litt.* 51. *b. Plowd.* 142. *b.* 423. *a. Cr. Jac.* 61. 2 *Mod.* 249. 2 *Vent.* 203, 204. But I ſuppoſe he may bring an Ejectment, becauſe Leaſe, Entry and Ouſter muſt be confeſſed. *Quære*, for Confeſſion of Leaſe, Entry and Ouſter is not a Confeſſion of any Entry ſufficient to make out the Plaintiff's Title where an Entry is neceſſary thereto, but that the Party muſt actually enter. 1 *Saund.* 319. 1 *Sid.* 233. 1 *Mod.* 10. 1 *Vent.* 42, 332. 3 *Keb.* 218. 1 *Salk.* 246. *Skin.* 424.

ment, and two Acres of Land, with the Appurtenances, ſituate, lying and being in G. in the ſaid County of S. and the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues, and Profits, of all and ſingular the ſaid Premiſſes (a), together with all Deeds, Eſcripts, and Muniments whatſoever, touching, or any ways concerning the ſame Premiſſes, now in the Poſſeſſion of him the ſaid A. B. or which he can any ways come at without Suit in Law: To have and to hold the ſaid Meſſuage or Tenement, and two Acres of Land, ſituate, lying and being in G. aforeſaid, in the ſaid County of S. and the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues and Profits thereof, and of every Part and Parcel thereof, and all and ſingular other the Premiſſes herein before by theſe Preſents bargained and ſold, or meant, mentioned, or intended to be herein and hereby bargained and ſold, with their and every of their Appurtenances, unto the ſaid J. B. his Executors, Adminiſtrators and Aſſigns, from henceforth for and during, and unto the full End and Term of one Year from henceforth next enſuing, and fully to be compleat and ended: (b) Yielding and paying therefore unto the ſaid A. B. his Heirs and Aſſigns, at the End of the ſaid Term, the

But the Words *Bargain and Sell*, or *Demiſe*, in Conſideration of Money will raiſe a Uſe.

But if the Words *Bargain and Sell*, in Conſideration of Money, be in the Leaſe; or if in Conſideration of Money he doth *demiſe*, *&c.* there an Uſe will ariſe by the Statute of Uſes.

But if it is only rendering Rent out of the Land, that ſeems not to be a ſufficient Conſideration to raiſe an Uſe. 1 *Mod. Rep.* 262, 263. See 2 *Mod.* 252, 253.

By Bargain and Sale of the Reverſion, Remainder of Rents, Iſſues and Profits, Bargainee is poſſeſſed by the Statute of Uſes of a Term without Attornment, and may diſtrein or have Debt.

(a) By this Bargain and Sale of the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues and Profits, *&c.* the Bargainee, by Virtue of the Statute of Uſes, becomes poſſeſſed. 2 *Rep.* 35. *b.* (it being a Term) without any Attornment, and he may without Attornment diſtrein or bring an Action of Debt for Rent. *Vaugh.* 51. 8 *Rep.* 93. *b.* 94. *a.*

Bargain and Sale for Years is good without Inrollment.

There needs no Inrollment of a Bargain and Sale for Years, that executes by the Statute without it. 2 *Rep.* 35. *b.* 36. *a.* 8 *Co.* 93. 2 *Roll. Abr.* 204.

The Conſideration Money on a Bargain and Sale raiſes a Uſe without reſerving a Rent; but in a Leaſe a Rent muſt be reſerved.

(b) It is not neceſſary in a Bargain and Sale for Years, to have a Reſervation of Rent; becauſe the Conſideration of Money raiſes the Uſe: But where it is by Demiſe, Grant, and to Farm let, there ought to be a Reſervation of Rent at the leaſt to raiſe a Uſe; and whether that will do, it being a thing iſſuing out of the Land only, was a great Queſtion. *Vide* 1 *Mod. Rep.* 263. But afterwards adjudg'd that it would. 2. *Mod.* 252, 253.

Rent of one Pepper-Corn, if the ſame ſhall be demanded, to the Intent that by Virtue hereof, and of the Statute for transferring of Uſes in Poſſeſſion, (a) the ſaid J. B. may be in the actual Poſſeſſion of the ſaid Premiſſes, and (b) be capable of accepting of a Grant and Releaſe of the Reverſion and Inheritance thereof to him the ſaid J. B. his Heirs and Aſſigns for ever, to the only proper Uſe and Behoof of the ſaid J. B. his Heirs and Aſſigns for ever, and to and for no other Uſe, Intent or Purpoſe whatſoever. In Witneſs, &c.

The Uſes declared.

A Releaſe upon the Bargain and Sale for a Year.

This Indenture (c) made the ſecond Day of September in the fourteenth Year of the Reign of our Sovereign Lord George II. by, &c. and in the Year of our Lord 1740. between A. B. of F. in the County of S. Gent. of the one Part, and J. B. of A. in the ſaid County of S. Gent. of the other Part, Witneſſeth, That as well for and in Conſideration of the Sum of One hundred Pounds (d) of lawful Money of England, by him the ſaid J. B. to him the ſaid A. B. in Hand paid, before the Sealing and Delivery hereof, the Receipt whereof he the ſaid A. B. doth hereby acknowledge, and thereof and therefrom doth acquit and diſcharge the ſaid J. B. his Heirs, Executors and Adminiſtrators, and every of them for ever by theſe Preſents, as alſo for diverſe other good Cauſes and Conſiderations him the ſaid A. B. hereunto moving,

(a) 27 *H.* 8. *cap.* 10.

(b) So far in Poſſeſſion as to accept of a Releaſe of the Inheritance, but not to bring Treſpaſs until actual Entry. *Carter* 66, 78.

But Tenant by Statute or *Elegit* may after the Land extended bring Treſpaſs without Entry. 1 *Mod. Rep.* 217. 5 *Rep.* 124. *a. Carter* 66, 78.

Leaſe and Releaſe make but one Conveyance.

(c) A Leaſe and Releaſe are but one Conveyance, and in the Nature of one Deed. 1 *Mod.* 252.

(d) A Releaſe will operate without a Conſideration; but it is convenient to put a valuable Conſideration in, as Money, or Love and Affection, or Marriage, *&c.*

*Note*; Since the making of the Statutes of 13 *El. cap.* 5. and 27 *El. cap.* 4. againſt fraudulent Conveyances, if a Man makes a voluntary Feoffment, or other Conveyance, without good Conſideration, it ſhall be fraudulent againſt a Purchaſer for a real Conſideration, or a Mortgagee, a Judgment or Statute-Creditor, for good Conſiderations *. See the *Statutes*, & *Cro. Jac.* 270, 271. *pl.* 3. They are fraudulent againſt a Purchaſor; tho' they are good amongſt themſelves.

* But it ſhall be good againſt the Party, his Executors, Adminiſtrators, *&c. Cro. Jac.* 271. *pl.* 3.

*Note*;

**moving, he the ſaid A. B. hath granted, bargained, ſold, remiſed, releaſed, and for ever quit-claimed and confirmed, and doth by theſe Preſents, grant, bargain, ſell, remiſe, releaſe, and for ever quit-claim (a) and confirm unto the ſaid J. B. his Heirs and Aſſigns, in his actual Poſſeſſion now being (b), by Virtue of one Indenture of Bargain and Sale for one Year thereof**

The Conſideration Money muſt be proved on Trial.

*Note*; Upon a Trial, the Conſideration of the Money paid, for which the Judgment or Statute was entered into, muſt be proved.

The Words of *Littleton* in Releaſes.

(a) Remiſe, Releaſe, and quit claim, are the Words uſed by *Littleton*, *ſect.* 445.

Poſſibilities, Rights, Titles, or Choſes in Action, cannot be granted or aſſigned;

It hath been the great Wiſdom and Prudence of the Sages of our Law, to provide, that no Poſſibility, Right, Title, or Choſe in Action, may be granted or aſſigned to Strangers*; for that would make Multiplicity of Suits, and great Oppreſſion to the People; neither can they be transferr'd by Act in Law; but all Rights, Titles and Actions may, by the Prudence and Policy of the Law, be releaſed to the Terre-Tenant, for the reaſon of his Repoſe and Quiet, and for Avoidance of Contentions and Suits. 10 *Rep.* 48. *a.*

but may be releaſed to the Terre-tenant.

(b) Where-ever a Releaſe is made, it is abſolutely neceſſary, that he to whom the Releaſe is made be in Poſſeſſion of ſome Eſtate at the Time of the Releaſe. *Litt. ſect.* 447.

But if a Man occupies as Tenant at Sufferance, a Releaſe will not enure to him for want of Privity. *Litt. ſect.* 461. His being Tenant at Sufferance is not good to veſt any Eſtate in him for want of Privity between them; and a Releaſe to him, as to him who had the Reverſion, is void, becauſe he had not any Poſſeſſion; there being no Eſtate in him. And an Eſtate cannot be veſted in him in Reverſion by this means: For if Tenant for Life releaſes to him the Reverſion, it is void by way of Releaſe: And as a Surrender it cannot paſs for want of apt Words. *Cro. Eliz.* 21. *pl.* 2. *Dyer* 251. *pl.* 91.

But where a Man is in Poſſeſſion by Virtue of a Leaſe at Will, there a Releaſe ſhall operate by reaſon of the Privity between the Parties. And it is vain to make an Eſtate by Livery of Seiſin to another who hath the Poſſeſſion before. *Litt. ſect.* 461, 462.

What Things are required to the well making of a Releaſe.

He that makes a Releaſe of Lands muſt have an Eſtate in himſelf, out of which the Eſtate may be derived to the Releſſee; and the Releſſee is to have an Eſtate in Poſſeſſion in Deed or in Law, in the Land whereof the Releaſe is made, as a Foundation for the Releaſe; there muſt be Privity of Eſtate between the Releſſor and Releſſee; and be ſufficient Words in Law not only to make the Releaſe, but alſo to create and raiſe a new Eſtate, or the Releaſe will not be good. *Co. Litt.* 271.

* But a Choſe in Action may be aſſigned to the King. 1 *Williams* 252.

made by the ſaid A. B. to him the ſaid J. B. which ſaid Indenture bears Date the Day next before the Day of the Date of theſe Preſents, and by Force and Virtue of the Statute for transferring of Uſes into Poſſeſſion, All that Meſſuage or Tenement, and two Acres of Lands with the Appurtenances, ſituate, lying and being in G. aforeſaid in the ſaid County of S. and the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues and Profits thereof, and of every Part and Parcel thereof, together with all Ways, Paſſages, Waters, Water-courſes, Commons, Profits and Appurtenances to the ſame Premiſſes, or any Part or Parcel thereof belonging or in any wiſe appertaining; together alſo with all the Eſtate, Right, Title, Intereſt, Property, Claim and Demand (a) whatſoever of him the ſaid A. B. of, in and unto the ſaid Premiſſes, or any Part or Parcel thereof; To have and to hold the ſaid Meſſuage or Tenement, Lands and Premiſſes, before by theſe Preſents granted, bargained, ſold, remiſed, releaſed, quit-claimed and confirmed, or meant, mentioned, or intended to be herein and hereby granted, bargained, ſold, remiſed, releaſed, quit-claimed and confirmed; and the Reverſion and Reverſions, Remainder and Remainders, Rents, Iſſues and Profits thereof, and of every Part and Parcel thereof (b) with their and every of their Appurtenances, unto the ſaid J. B. his Heirs and Aſſigns for ever; (c) to the only Uſe and Behoof of the ſaid J. B. his Heirs and Aſſigns for ever; (or it may be thus, viz.) To the Releaſee, his Heirs and Aſſigns for ever, to the Uſes, Intents and Purpoſes herein after mention'd, and to no other Uſe, Intent or Purpoſe whatſoever, viz. To the Uſe of A. B. &c. and ſo declare the Uſes: Or elſe it may be thus, To A. B. his Heirs and Aſſigns, to the only Uſe and Behoof of the ſaid A. B. his Heirs and

(a) Theſe are *Littleton's* Words, and neceſſary to be put in. *Litt. ſect.* 445.

(b) As it is ſaid before, in the Leaſe for a Year, theſe Words do veſt the Reverſion, *&c.* in him. So that by Virtue of the Leaſe and Releaſe, and Statute of Uſes, he may diſtrain, or bring Debt for Rent, without Attornment. *Vide Vaugh.* 50, 51. This was at the Common Law: But now Attornments are gone by the Statute of 4 & 5 *Anna.*

(c) If I let Land for Life, or Years, and releaſe all the Right I have without the Word *Heirs*, this at the Common Law is but an Eſtate for Life; but if I releaſe to him and his Heirs, or to him and the Heirs of his Body, then this is an Inheritance. *Litt. ſect.* 465.

A Uſe is not executed by the Statute of Uſes, unleſs the Words (To the only Uſe and Behoof of *A. B.* his Heirs and Aſſigns for ever,) are in the Deed, made without Conſideration.

and Aſſigns for ever, (a) in Truſt nevertheleſs for the ſaid C. D. Now if the Words, (To the only Uſe and Behoof of the ſaid A. B. his Heirs and Aſſigns for ever) are not in the Deed, then the Eſtate doth execute by the Statute of Uſes, and the Truſt is void.

But it ſhall be to the Uſe of the Leſſor or Feoffor, &c.

(a) If theſe Words are not in, then there being no Uſe declared, it will be to the Uſe of the Releaſor, as it is in Title *Feoffment*. Where if I convey Lands which I have on the Part of the Mother, to *J. S.* and his Heirs, without Conſideration, the Uſe will be void; and the Land ſhall again return to me and my Heirs on the Part of the Mother; for the Law conſtrues the Uſe, the ſame in State and Quality as the Land was. *Hob.* 31. *Co. Litt.* 13. *a.* 31. *a.* 1 *Rep.* 100. *b.* 9 *Rep.* 8. *a. b.* 11. *a.* *Dyer* 134.

Feoffment or other Conveyance without Conſideration, not ſaying to whoſe Uſe; it ſhall be to the Uſe of the Feoffor.

So that a Feoffment without Conſideration (and the like of any other * Conveyance) to a Man and his Heirs, and ſays not to whoſe Uſe, it ſhall be to the Uſe of the Feoffor and his Heirs. 9 *Rep.* 8, *a. b.* 11. *a.* See 1 *Lutw.* 823.

* As a Recovery or Fine. 9 *Rep.* 8. *b.* 11. *a.*

So where it is to *A. B.* his Heirs and Aſſigns for ever; To the only Uſe and Behoof of the Releaſee, his Heirs and Aſſigns for ever, in Truſt for the ſaid *C. D.* (which ſaid *C. D.* muſt be a Party to the Deed, and a Conſideration of Five Shillings to be paid by the Releaſee, and the Purchaſe-Money declared to be paid by *C. D.* the *Ceſtuy que Truſt*) if theſe Words are not in the Deed, then the Eſtate doth execute by the Statute of Uſes, and the Truſt is void.

To make a Tenant to a *Præcipe*, the Releaſe muſt be made to him and his Heirs, to the Uſe of him and his Heirs for ever.

In a Leaſe and Releaſe to make a Tenant to the Præcipe, where the Releaſe to make the Tenant to the Præcipe is made to A. B. and his Heirs, (viz. the Tenant to the Præcipe) it muſt be alſo to the Uſe of him the ſaid A. B. his Heirs and Aſſigns for ever: For the Releaſee muſt be abſolute Tenant of the Freehold.

Releaſe may be made upon Condition.

A Releaſe that doth enure by Way of paſſing away an Eſtate, &c. may be made upon Condition, or with a Defeazance; ſo as the Condition be contained in the Releaſe, or delivered at the ſame Time with it. Co. Litt. 236.

No Covenants neceſſary.

And tho' there may be a Recital, Covenants, Warranty, &c. inſerted in this Releaſe; yet it is good without any ſuch Additions.

# Recoveries.

*Recuperatio, Quid.*

**Recuperatio cometh of the Word** Recuperare, **and** Recuperatio **in the Common Law is all one with** Evictio **in the Civil Law.** Co. Litt. 144. a.

**For the Suffering of a Recovery.**

A Bargain and Sale to make a Tenant to the *Præcipe.* See in *Bridgman's Conveyances* 229.

A Deed to levy a Fine and ſuffer a Recovery.

A Deed to levy a Fine, and ſuffer a Recovery. *Bridgman* 27, 28, *&c.* 91.

By Common Law none could falſify a Recovery but he who had the Freehold.

**By the Common Law none could falſify a Recovery of a Freehold,** (a) **but he who had the Freehold.** 2 Inſt. 322.

(a) This was before *Edw.* 4th's Time, in whoſe Reign feigned Recoveries came in Practice.

None can falſify it but he who claims under the Sufferer.

It is a Rule in Law, that none can falſify a Recovery, but he who claims under him who ſuffer'd it. *Raym.* 29.

**Recoveries are of that Reputation now, that they are ſtrengthened by the Statute of** 31 Eliz. cap. 2. 2 Inſt. 519.

A Common Recovery is a *fictio juris*, a Common Aſſurance of Lands whereon Uſes may be limited and raiſed.

**A Recovery is** fictio juris, **or a formal Act by Conſent, uſed for the better Aſſurance of Lands and Tenements upon any Man, wherein the Recovery in Value of ſuppoſed Recompence for him who loſeth his Land, is but a Fiction in Law.**

(b) **And this Recovery by Conſent is now by Cuſtom become a Common Aſſurance and Conveyance upon which Uſes may be limited and raiſed.** 1 Rep. 15. b. 61. 2 Rep. 74.

(b) The Recompence in Value goes only to them who vouch and have Loſs. *Plow. Com.* 514, 515. *Vide poſtea.*

How a Recovery is ſuffered, by Agreement to bring a real Action.

**To ſuffer a Recovery, the Tenant of the Freehold agrees with the Demandant that he ſhall bring his Action real againſt him, as tho' he the Demandant had good Right to the Land, and the Tenant no Right of Entry to the ſame: The Tenant appearing to the**

**Writ,**

Suppos'd Warranty, and Vouchers.

Judgment by Default.

Writ, vouches to Warranty A. B. the Cryer of the Court, who is called the Common Vouchee, and is ſuppoſed to warrant the Title; this Vouchee appears, as if he would defend the Tenant's Title, and the Demandant exhibits a Declaration againſt him, who thereupon prays a Day to make his Defence; but on the Day given he makes Default, and the Demandant hath Judgment to recover the Land againſt the Defendant or Tenant in Tail, and he to recover in Value againſt the Common Vouchee, &c. Co. Litt. 10. Rep. 37.

A Recovery with ſingle Voucher bars the Tenant to the *Præcipe* and his Heirs, of the Eſtate-tail in Poſſeſſion.

And deſtroys all Reverſions and Remainders.

The Intent of a Recovery with a ſingle Voucher (a) is to bar the Tenant to the Præcipe and his Heirs of ſuch Eſtate-Tail, which then is in him, and to deſtroy the Eſtate which others have of any Reverſion expectant, or in Remainder, dependant upon the ſame, and of all Leaſes and Incumbrances derived out of ſuch Reverſions or Remainders. Vide Noy's Maxims 81. Bro. Tit. Recovery. Yel. 51. 3 Co. 5. Moor 256.

The Intent of double Voucher.

A Recovery with double Voucher is to bar the firſt Vouchee and his Heirs of every ſuch Eſtate, as at any Time was in the ſame Vouchee, or any of his Anceſtors, whoſe Heir he is of ſuch Eſtate, and all other Perſons, of ſuch Right to a Remainder or Reverſion, as was at any Time thereupon expectant or depending, and of all Leaſes, Charges and Incumbrances derived out of any ſuch Reverſion or Remainder, and that will be alſo a perpetual Bar of ſuch Eſtate. Noy's Maxims 28, 82.

The Intent of treble Voucher.

A Recovery with treble Voucher is to make a perpetual Bar of the Eſtates of the Tenant, and of every ſuch Eſtate of Inheritance as at any Time had been in the firſt or ſecond Vouchee, or any of them, or either of their

Recovery with ſingle Voucher bars no Eſtate, but ſuch as Tenant in Tail hath in Poſſeſſion.

But with double Voucher all Intereſts, Eſtates and Titles in the Vouchee at the Time of Warranty, are barred.

(a) The Recovery with ſingle Voucher doth not bar any Eſtate, but ſuch as the Tenant in Tail hath in Poſſeſſion at the Time of the Recovery had; ſo that if Tenant in Tail be in Poſſeſſion of any other Eſtate, by Diſſeiſin, or the Conveyance of the Diſſeiſor, or the like, the Eſtate is not barred: As if Tenant in Tail make a Feoffment in Fee of Land; and then takes back a new Eſtate to himſelf from the Diſcontinuee, in Tail or in Fee, and then doth ſuffer a Common Recovery with a ſingle Voucher; by this Recovery the Entail is not barred: But by Recovery with double Voucher it would have been barred; for a Recovery with double Voucher bars all Intereſts, Eſtates, and Titles, that the Vouchee hath at the Time of the Entry into the Warranty.

their Anceſtors whoſe Heirs he or they are of ſuch Eſtate; and as well of the Reverſion or Remainders thereupon dependant, as alſo of all Leaſes, Eſtates, Charges, and Incumbrances, derived out of any ſuch preſent Eſtate, Reverſion, or Remainder. Noy's Maxims 82.

32 H. 8. *cap.* 31. provides only for the Remainder or Reverſion expectant on Eſtate for Life.

The Statute of 32 H. 8. cap. 31. provides only for the Remainder or Reverſion expectant on an Eſtate for Life, and not upon an Eſtate-Tail; (a) and therefore all Recoveries ſuffered by the Tenant for Life, Tenant by the Curteſy, or after Poſſibility, ſhall be void againſt him in the Reverſion: But no Proviſion is made for the Preſervation of a Reverſion or Remainder expectant upon an Eſtate-Tail. 10 Rep. 45. a.

If Feoffee of the Tenant in Tail ſuffer a Recovery, it bars not the Tail, unleſs Tenant in Tail is vouched.

(a) If Tenant in Tail make a Feoffment in Fee, and his Feoffee ſuffer a Recovery, this doth not bar the Eſtate-Tail, becauſe the Recompence cannot go to the Eſtate-Tail: But if the Tenant in Tail be vouched, then it is a Bar. *Raym.* 29.

14 *Eliz.* preſerves no Remainder nor Reverſion expectant on Eſtates-tail on Recovery againſt Tenant for Life, who vouches Remainder in Tail.

Alſo the Statute of 14 Eliz. doth not extend to preſerve any Reverſion or Remainder expectant upon an Eſtate-Tail, where the Præcipe is brought againſt Tenant for Life, and he in Remainder in Tail is vouched. 10 Rep. 45. a.

Againſt what Tenant the Recovery may be had.

To every Recovery there muſt be a good Tenant to the Præcipe*, or elſe it is void: (b) But adjudged that a Tenant to the Præcipe, dependente placito, before Judgment is well enough. Show. 347. See 2 Salk. 568. Comb. 425.

* Tho' there be no Tenant to the *Præcipe*, yet a Common Recovery is good by way of Eſtoppel againſt the Party that ſuffered it, but not againſt Remainder Men, Strangers, &c. *Lucas* 45.

(b) *Viz.* The Writ of Entry muſt be brought againſt a Tenant of the Freehold, in Poſſeſſion, whether the ſame be in Fee, in Tail or for Life: But it cannot be brought againſt thoſe in Reverſion or Remainder, becauſe they are not in the actual Seiſin and Poſſeſſion of the Land: But they muſt come in as Vouchers.

*Note*; If there is any Eſtate for Life in Being, it muſt be ſurrendered before the Recovery; otherwiſe the Recovery will be void as to that, for want of a good Tenant to the *Præcipe*.

A Recovery ſhall be to the Uſe of him who ſuffered it, if no Uſes declared.

A Recovery is now become a Common Aſſurance: (c) 2 Rep. 74. a. And where no Uſes are declared, it ſhall be to the Uſe of him who ſuffer'd it. 9 Rep. 8. b. 11. a. Poph. 23.

What Recoveries are favoured in Law.

(c) Although the Recompence in Value is one main Reaſon why a Recovery bars, yet it is not the ſole Reaſon; for Recoveries ſhall be favoured, being for the Preſervation of Eſtates; and ſhall not be taken ſo ſtrictly as real Recoveries are. *Poph.* 23. 2 *Inſt.* 353. 2 *Vent.* 32.

The Recompence in Value goes only to them who vouch.

The Recompence in Value in the Recovery goes to them only who vouch, and have Loſs. Plow. Com. 514. b. 515. a.

A Recovery againſt Tenant for Life only is a Forfeiture.

A Common Recovery had againſt Tenant for Life only, is a Forfeiture of his Eſtate; for it is now a Common Aſſurance. Pelham's Caſe, 1 Rep. 10 Rep. 44. a.

Recovery can't be ſuffered by Tenant for Years.

Recoveries by Covin.

Tenant for Years cannot ſuffer a Recovery, for want of a Freehold: And if Tenant for Life ſuffers a Common Recovery by Conſent and Covin between ſuch Tenant and the Recoveror; this will be a Forfeiture of the Eſtate of ſuch Tenant, and he in the Reverſion may enter preſently. Wood's Inſt. 251. 14 Eliz. c. 8. Vide Co. Litt. 252. a. 1 Roll. Abr. 853.

There is no Act to preſerve Reverſions or Remainders on Eſtates-Tail.

No Act hath been made to preſerve any Reverſion or Remainder expectant upon an Eſtate-Tail; (a) for an Eſtate-Tail is ſuch Eſtate as by Poſſibility may endure for ever. 10 Rep.

How Tenant for Life, and Remainder in Tail, may bar the Entail and a Remainder in Fee.

Where a Recovery is againſt Tenant for Life (b), and the Tenant in Remainder in Tail, where he in Remainder is vouch'd; the Judgment given for the Tenant in Tail to recover in Value, is this only which binds him in the Reverſion. 10 Rep. 45. b.

Feoffment in Fee by Tenant for Life to Reverſioner in Fee is a Forfeiture, and deveſts Remainder in Tail.

Tenant for Life, Remainder in Tail, Reverſion in Fee: Tenant for Life enfeoffs him in the Reverſion in Fee; it is a Forfeiture of his Eſtate, and deveſts the Remainder in Tail. 1 *Rep.* 140. *a.*

How the Common Aſſurance by a Recovery is made.

The Common Aſſurance is that where there is Tenant in Tail with a Reverſion or Remainder over, the Tenant in Tail bargains and ſells (c) the Land by Deed indented and inrolled, in Conſideration of 5 s. to another againſt whom the

(a) Unleſs it be of the Gift of the Crown by the 34 *H.* 8. *cap.* 20.

(b) Tenant for Life, Remainder in Tail, Remainder in Fee: Tenant in Tail in Remainder and the Tenant for Life agree to ſuffer a Recovery, and bar the Entail and Remainder, and create a Fee to the Tenant in Tail; the manner of doing it is thus. Tenant for Life muſt make a Leaſe for ninety-nine Years, (if he ſo long live) in Truſt for himſelf, at a Pepper-Corn Rent, and afterwards he may either be, or may make a Tenant to the *Præcipe*; and then he in Remainder in Tail being vouch'd, vouching over will bar the Entail, and Remainder in Fee. *See* 2 *Rep.* 6. *a. b.*

By Deed of Bargain and Sale inrolled by Tenant in Tail, only a Fee during Life of Tenant in Tail paſſes.

(c) Tenant in Tail bargains and ſells by Deed inrolled, nothing paſſes but a Fee-ſimple deſcendible, du-

Writ of Entry is brought, and he vouches the Tenant in Tail, and he vouches over the Common Vouchee; Coke ſaid, God defend that the Eſtates of Subjects, which depend upon ſuch Recoveries, ſhall be drawn in Queſtion. And yet the Bargainee had but an Eſtate determinable upon the Life of Tenant in Tail. 10 Rep. 45. b. Carter 208, 209.

ring the Life of the Tenant in Tail only. 1 *Saund.* 260, 261. *Car.* 208, 209. 10 *Co.* 96, 98. 1 *Co.* 14, 15. *Co. Litt.* 151. *b.*

Fine and Recovery by Tenant in Tail bars Remainder in Tail.

Tenant in Tail, Remainder in Tail, Remainder in Fee: Tenant in Tail levies a Fine with Proclamations, and afterwards ſuffers a Recovery. And whether this Recovery ſhould bar the Remainder, becauſe the Eſtate-Tail was barred by the Fine, ſo as the Tenant in Tail had no Eſtate in him at the Time of the Recovery, was the Queſtion. But it was adjudged that it was a good Bar, becauſe it is a Common Aſſurance; and all People's Eſtates depend upon Recoveries. 1 *Roll. Rep.* 223. *inter Herbert* & *Binion.*

But where Tenant for Life and he in Remainder in Tail ſuffer a Common Recovery, in which they both vouch the Common Vouchee; (a) this ſhall not bar the Eſtate-Tail, becauſe he in Remainder in Tail is not Tenant to the Præcipe, but only the Tenant for Life. Leach and Cole, Cro. Eliz. 670. pl. 26. and Knyveton's Caſe in Dyer 8. and 2 Rep. 6. b. in Coppledike's Caſe.

(a) But if the *Præcipe* had been brought againſt Tenant for Life, and he had vouch'd Tenant in Tail, it would have been a good Bar. *See* 2 *Rep.* 6. *a. b. Coppledike*'s Caſe.

A Recovery by Tenant in Tail, with double Voucher, bars his Iſſue, and all Remainders and Reverſions.

A Common Recovery againſt Tenant in Tail, with double Voucher, ſhall bind not only (b) the Remainder, and all Leaſes, Charges, &c. granted or made by him in the Remainder (c); but alſo the Reverſion and all Leaſes, Charges, &c. granted by him in the Reverſion. And there is no Diverſity between a Reverſion and a Remainder expectant upon an Eſtate-Tail, as to this Purpoſe. Capel's Caſe, 1 Rep. 62. b. 63. a. 2 Rep. 53. a. b. Moor 158. Cr. Eliz. 718. 2 Roll. Abr. 396. Moor 154.

(b) His Iſſue, and

A Recovery bars, becauſe it was a Bar at the Common Law.

(c) The Reaſon why a Common Recovery bars the Iſſue, was not becauſe it was a Common Aſſurance; but becauſe at the Common Law every Recovery was a Bar. *Raym.* 323.

A Recovery bars not an Executory Eſtate.

A Recovery bars not where there is not a Privity in Law; it ſhall bind only the Iſſue of the Tenant in Tail, and thoſe in Reverſion and Remainder, not where there

154. 4 Leon. 150. &c. Poph. 5, 6. there is an executory Eſtate. *Carter* 53.

Recovery againſt Tenant in Tail deſtroys all Proviſo's and Conditions depending on it.

But a Recovery againſt Tenant in Tail ſhall bar and deſtroy all Proviſoes and Conditions depending upon it.

A Recovery bars the Eſtates and all Powers annexed.

*Per Hale* Chief Juſtice. A Recovery doth not only bar the Eſtate, but all Powers annex'd to it; for the Recompence in Value is of ſuch ſtrong Conſideration, that it ſerves as well for Rents, Poſſibilities, *&c.* going out of, and depending upon the Land, as for the Land it ſelf. 1 *Ventr.* 228. *King* and *Melling*.

But a Deviſe to an Heir, to pay his younger Sons, &c. or to them, he cannot bar them.

But where a Man deviſes that his Heir ſhould make a Payment to his younger Sons, or his Executors, *&c.* otherwiſe the Land to be to them: If the Heir by a Recovery might avoid it, it would be very miſchievous, and might fruſtrate all Deviſes. *Cro. Jac.* 593. *Pell* and *Brown*'s Caſe. 1 *Roll. Abr.* 611. *Palm.* 131. 2 *Roll. Rep.* 216. 2 *Leon.* 111. *Vaugh.* 272.

Gift in Tail reſerving a Rent: A Recovery by Tenant in Tail bars not the Rent.

**But where a Man makes a Gift in Tail, reſerving a Rent to him and his Heirs, and Tenant in Tail ſuffers a Recovery of the Land; this Rent is not deſtroyed by this Recovery, becauſe the Rent iſſues out of the Land entailed, and continues during the Eſtate-Tail.** Ibid. Cr. Eliz. 792. 2 Lev. 30. 1 Mod. 109.

Nor a Rent granted by Tenant in Tail.

**And if the Tenant in Tail had granted a Rent to another in Fee, the Recovery againſt Tenant in Tail ſhall not bar this Rent, no more than a Rent reſerved upon an Eſtate-Tail, granted by him who made the Gift in Tail ſo long as the Eſtate continues.** Ibid.

Nor a Rent granted by Tenant in Fee.

**Alſo if Tenant in Fee grants a Rent in Fee, out of Lands, and afterwards ſuffers a Common Recovery of the Lands, the Rent is not determined.** 2 And. 170.

Deviſe if his Son *T.* has no Iſſue at his Death, then to his Son *L.* But if *T.* has Iſſue, to the Heirs of *T.* for ever.

**Where a Man deviſeth that if his Son** Thomas **hath no Iſſue at his Death, then his Son** L. **and his Heirs ſhall have it: But if** T. **ſhall have Iſſue at the Time of his Death, then to the right Heirs of** Thomas **for ever.**

*T.* ſuffers a Recovery, and dies *ſans* Iſſue.

Thomas **ſuffers a Recovery, and dies without Iſſue, Whether this ſhall bar the executory Eſtate was the Queſtion.**

*T.* had but an Eſtate for Life; and the Diſcent of the Reverſion to him as Heir deſtroyed not the Remainder.

**It was adjudged, 1. That** T. **had but an Eſtate for Life, according to the Limitation of the Deviſe, although the Reverſion deſcended to him as Heir; and that this Diſcent did not deſtroy the Remainder.**

**And** Archer's **Caſe,** 1 Rep. 64, 65. **agrees, for there** R. Archer, **who was Deviſee, was alſo Heir.**

And is not a Contingency upon a Contingency.

**2. That it was not a Contingency upon a Contingency, (for if it were it would be void, as** Stafford's **Caſe is) but there is a meſne Contingency operating**

ſeveral Ways; viz. if T. hath Iſſue, then to him in Fee, that if he hath no Iſſue living, then to L.

Nor an Executory Deviſe to *T.* but a contingent Remainder deſtroyed by the Recovery.

3. That this is not an executory Deviſe to T. but a contingent Remainder (a); and therefore is deſtroyed by the Recovery, according to the reaſon in Archer's Caſe. 1 Rep. 65. b.

As to Pell and Brown's Caſe they ſaid, that although they did not deny it, yet it had not been well approved, and that it would be dangerous to enlarge ſuch executory Deviſes, which cannot be barred: Becauſe they tend to ſupport Perpetuities. 1 Sid. 47, 48. Vide Vaugh. 271.

In what Caſes a Recovery bars, where there is Privity.

Not Strangers.

A Recovery bars only where there is a Privity in Law; For Strangers are not barred by a Recovery and Non-Claim, as they are in a Fine: Nor ſhall the Recovery bar an Heir who Claims as a Purchaſer, and not by Diſcent; or where there is an executory Eſtate, which depends upon a Contingency; but it will bar a Contingent Remainder. 3 Rep. 5. Carter 53. Lutw. 1224. 3 Salk. 297.

Leaſes are not barr'd by a Recovery.

If a Leaſe for Years is made by him who after ſuffers a Recovery, the Leaſe is good, and ſhall not be defeated by the Recovery; but it is otherwiſe where the Recovery is by a good Title. 2 Leon. 65. Vide Cr. Eliz. 718.

*A.* on Marriage of *B.* his eldeſt Son, with *C.* makes a Leaſe of a Hundred Years, to begin after the Death of B. and *C.* without Iſſue Male; and declared to be for Preferment of Daughters to be begotten, to raiſe Portions; and after ſettles the Reverſion to divers Uſes.

Upon a Marriage of B. the eldeſt Son of A. with C. A. makes a Leaſe of a hundred Years by Indenture, to commence after the Death of B. and C. without Iſſue Male, which Leaſe was therein declared to be for the Preferment of the Daughters which ſhould be begotten between them, and for the raiſing of Portions: And by Indenture afterwards, the Reverſion was ſettled to divers Uſes. B. and C. marry and have Iſſue a Son and a Daughter, the Son dies without Iſſue, the Daughter is living, B. and C. are dead.

The Queſtions on it.

The Queſtions upon this Leaſe were;

1. Whether it was good in Point of Creation?

2. If it were good, whether a Recovery cannot bar it?

3. For that it muſt commence upon a collateral Limitation, and ſhall be taken ſtrictly.

Wyndham Juſtice. The true Meaning was that there ſhould be a Proviſion for the Daughters in caſe of Failure of Iſſue Male; and that this Leaſe was made with more Skill than ordinary.

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(a) Recovery doth not bar an executory Deviſe. *Pell* and *Brown*'s Caſe, *Cro. Jac.* 1 *Roll. Abr.* 611. *Palm.* 131. 2 *Roll. Rep.* 216. 2 *Lev.* 111. and *Gardner* and *Shelden*'s Caſe, in *Vaugh.*

For as the common Courſe is, an Eſtate is limited in a Deed to the firſt Son, &c. in Tail, and for Default of ſuch Iſſue, Remainder to Truſtees for a hundred Years to raiſe Portions; here the firſt Son may when he comes of Age ſuffer a Recovery, and the Term for Years ſhall be barred; but here this being limited by another Deed, is not to be deſtroyed by the Son, or any Iſſue in Tail; and in all Caſes it ſhall be taken moſt ſtrongly againſt the Grantor.

The Leaſe ſhall not be deſtroyed by the Son, or Iſſue in Tail.

But ſhall commence in Default of Iſſue Male, or Death without Iſſue.

Twiſden. This Leaſe is good in Point of Creation, and ſhall commence for Default of Iſſue Male, or Death without Iſſue.

If the Leaſe had been to commence after the Death of T. S. without Heir, this would be void in its Creation: For it ſhall not be intended that any one ſhall die without Heir. But if it were when T. S. ſhall die without Iſſue Male, there it is good, for he hath a Reverſion in him.

That although it is ſubſequent to the Eſtate-Tail, in Point of Intereſt, yet it is precedent to it by Conveyance; but no Recovery by the Heir in Tail can touch this Leaſe.

That though it is ſaid that the Expectation upon the Failure of Iſſue in Tail is a foreign Expectation; yet it is a Proviſion uſually made for Daughters, and is an Eſtate which often happens. Goodyer and Clarke, Trin. 12 Car. 2 Ro. 1043. B. R.

The Wife with her Husband, Tenant in Tail, ſuffers a Recovery, and good to bar her of Dower.

The Husband was Tenant in Tail, and he and his Wife ſuffered a Recovery, and vouch'd according to the Courſe of Common Recoveries, but the Wife had nothing in the Land of her own Right.

It was objected, That the Recovery ſhall not bar the Intail, becauſe the Wife was named in the Præcipe as Joint-Tenant with her Husband, and appeared and vouch'd, and he had therefore admitted the Wife to have a Joint-tenancy, and that ſhe had cauſe to vouch, and that if ſhe ſhould not be admitted to have Joint-tenancy with her Husband, then it ſhall be taken to be her own Eſtate; ſo that the Eſtate-tail ſhall not be barred, but in reſpect of the Recovery over in Value, and the Wife ſurviving ſhall have the Recompence in Value by Concluſion, and then the Iſſue in Tail ſhall not be barred, (the Iſſue claiming only from the Husband.) For the Aſſets recovered in Value, which are had, or by Poſſibility may be had, is the Cauſe which bars the Entail.

But the Court agreed, that the Iſſue in Tail ſhould be barred.

It was found by the Verdict, that the Husband was only ſeiſed in Tail, and that he had loſt the Eſtate: So that the Recovery in Value ſhall go only to him, and he only who loſes ſhall have the Recompence; and here he ſhall have ſuch Eſtate as he loſt, which is an Eſtate-tail, to which the Wife is a Stranger: For if the Recompence had gone to her, it muſt have been a Fee-ſimple.

But it ſhall be intended that the Woman was named to bar herſelf of her Dower; for to ſuch Purpoſes Women are named in Common Recoveries had againſt their Husbands; and the common Uſage is to be obſerved in theſe Caſes, the Intent of the Parties being, that the Woman ſhall be barred of her Dower, and the Eſtate-tail (a) barred alſo. Plow. Com. 514. b. 515. a. 3 Rep. 6. b. 1 Vent. 358. Hob. 27. 2 Co. 74.

Wife Tenant in Tail; the Husband alone makes a Tenant to the *Præcipe*, who vouches Husband and Wife, is a good Recovery.

(a) If a Woman, who is Tenant in Tail takes Husband, and the Husband makes a Feoffment in Fee to make *A.* Tenant to the *Præcipe*; and a Writ of Entry is brought againſt the Feoffee; and he vouches the Husband and Wife, who appear and vouch over the common Vouchee; this is a good Recovery, and ſhall bar the Wife and all Remainders, as well as if the Husband and Wife had levied a Fine to make *A.* Tenant to the *Præcipe*; and the Recovery in value ſhall go over to the Eſtate of the Wife.

Two Husbands ſeiſed *in jure uxoris* in Tail in common, they muſt be vouch'd jointly, and not ſeparately.

But where there are two Husbands and Wives ſeiſed *in jure uxoris* in Tail, as Tenants in common; and one of the Husbands and his Wife are vouch'd, and they vouch the other Husband and his Wife, and they vouch over the common Vouchee; this ſhall not bar the Husband and Wife laſt vouch'd: But if the Husbands and the Wives had been vouch'd all together, it would have barred the Entail.

*A.* Tenant in Tail, and B. his Wife, Tenant for Life; Remainder to C. in Tail, Reverſion to *A.* in Fee.

A. and B. his Wife were ſeiſed to them, and the Heirs Male of the Body of A. Remainder to C. in Tail, Reverſion to A. in Fee.

*A.* levies a Fine to *D.* who vouches *A.* only.

A. levies a Fine to the Uſe of D. and his Heirs, E. and F. bring a Writ of Entry againſt D. who vouches A. only, who vouches the common Vouchee, and Judgment and Seiſin was had accordingly, B. the Wife then living.

The Uſes of the Recovery to *A.* for Life, then to B. for Life, then to the Heirs of *A.*

This Recovery was to the Uſe of A. for Life, and afterwards to B. his Wife for Life, and afterwards to the Heirs of A.

This Recovery ſhall bar, tho' the Wife not vouch'd.

The Queſtion was, Whether by this Recovery the Entail was barred, becauſe the Wife, who had an Eſtate with the Husband, was not vouch'd? And it was adjudged that this Recovery ſhall bar: For here was a good Tenant to the * Præcipe; and though the Husband, who had a Joint Eſtate with his Wife, was ſolely vouch'd; yet he coming in as Vouchee, comes in Privity of the Eſtate-tail, and not of any other Eſtate; and the Recovery in Value gives a Recompence in Value to the Eſtate-tail, which the Husband had, and alſo to the Remainder over. 3 Rep. 5. b. 6. a. Coppledike's Caſe. Moor 210. 2 Roll. Abr. 395. 4 Leon. 93. 1 And. 162. 2 Salk. 568.

* Made by the Fine.

An Entail to *A.* and B. his Wife, and to the Heirs of the Body of *A.*

An Eſtate is ſettled on A. and B. his Wife, and the Heirs of the Body of A. Remainder to D. See Moor, Caſe 350.

The Recovery is againſt *A.* as Tenant, who vouches common Vouchee, to the Uſe of *A.*

It is no Bar to D. in Remainder.

The Recovery is had againſt A. as Tenant, who vouches over the common Vouchee, which Recovery was to the Uſe of A. then B. the Wife died, and A. ſurvived her. This Recovery ſhall not bar D. in the Remainder, for between the Baron and Feme there are no Moieties, and the Husband hath no Power to ſever the Jointure; ſo that the Præcipe being brought againſt him ſolely, (a) the Recompence cannot for any Part enure to the Eſtate-tail or Remainder, for to all the Eſtate it cannot enure; becauſe the Wife hath a joint Poſſeſſion with the Husband at the time of the Recovery, and was no Party thereto.

(a) *Note*; In the other Caſe before, the Husband levied a Fine to a Stranger, againſt whom a *Præcipe* was brought, (he, *viz.* the Conuſee, being a good Tenant to the *Præcipe**.) But here the *Præcipe* is brought againſt * the Huſband; whereas he ought to come in as Vouchee, to bar the Entail; for a Recovery againſt him as Tenant to the *Præcipe* only, would not do in this Caſe.

* And the Husband came in as Vouchee.

And for a Moiety it cannot be good, becauſe there are no Moieties between Husband and Wife. 3 Rep. 5. a. b. Moor, Caſe 350. 2 Roll. Abr. 395. 4 Leon. 93. 1 And. 162. 2 Salk. 568.

*A.* Tenant in Tail, Remainder to *B.* in Tail, Remainder to *C.* in Tail, Remainder to *D.* in Fee.

*A.* makes a Feoffment, and Feoffee ſuffers a Recovery and vouches *B.*

It is no Bar to *A.* but it is a Bar to *B.* and all the Remainders.

A. is Tenant in Tail, Remainder to B. in Tail, Remainder to C. in Tail, Remainder to D. in Fee. A. makes a Feoffment, the Feoffee ſuffers a Recovery, in which B. is vouch'd, and he vouches over the common Vouchee; in this Caſe A. is not bound (a), but B. and all the Remainders over are bound: For although by the Feoffment of A. all the Remainders were

(a) There is no Recompence can go to him.

diſcontinued, and the Eſtate of B. C. and D. turned to Rights; yet in the Caſe of a Common Recovery, which is a Common Aſſurance, he who comes in as Vouchee, ſhall be, in Judgment of Law, in the Privity of the Eſtate, which he ever had, although the precedent Eſtate, whereupon the Vouchee's Eſtate depends, is diſcontinued.

So alſo in Coppledike's Caſe before; the Wife's Eſtate is not recontinued, yet the Husband, as Vouchee, ſhall be in Judgment of Law in of his Eſtate-tail; and it ſhall be the ſtronger, becauſe the Wife's Eſtate was put to a Right by the Fine; ſo that now the Husband comes in as ſole Tenant in Tail, and not jointly with his Wife, becauſe ſhe is not Vouchee.

But if the Husband and Wife had had a joint Eſtate to them and the Heirs of their Bodies, with Remainder over *, and the Husband only had been vouch'd, there it is doubtful whether the Eſtate-tail ſhall be barred; becauſe the Wife had a joint Inheritance with him; but here the Inheritance was only in him. 3 Rep. 5. b. Coppledike's Caſe 6. and alſo 6 Rep. 32. a.

* Whereas it was to Baron and Feme, and the Heirs Male of the Body of the Boron, with Remainder over.

*A.* and B. his Wife ſeiſed, and to the Heirs of the Body of *A.*

*A.* bargains and ſells in Fee, and Bargainee vouches *A.*

It bars the Eſtate-tail.

A. ſeiſed to him and B. his Wife, and the Heirs Male of the Body of A. A. by Deed indented and inrolled, bargains and ſells in Fee; the Bargainee ſuffers a Recovery, wherein A. is vouch'd, and he vouches over the common Vouchee and dies, leaving Iſſue; although A. the Father was only vouched, and not B. his Wife, yet the Eſtate-tail was barred, for the Reaſons in Coppledike's Caſe. 3 Rep. 5. b. 6. a. See 2 Salk. 568. 1 And. 162. 4 Leon. 93. And this Caſe is in the 6 Rep. 32. a. 2 Roll. Abr. 394.

Where Indentures are precedent to the Recovery, there can be no Parol Averment, it was to other Uſes:

But on Indentures ſubſequent, there may be an Averment to other Uſes.

A Diverſity was taken between Indentures precedent, which direct the Uſes of a ſubſequent Recovery, and Indentures ſubſequent: For when precedent Indentures are made, and afterwards a Recovery is had, there can be no Parol Averment, that the Recovery was to other Uſes than are declared in the Indentures: But againſt Indentures ſubſequent, declaring the Uſes of a precedent Recovery, there may be an Averment to other Uſes *. 9 Rep. 10. b. 11. a. Downam's Caſe.

* For this ſee *poſtea* in this Title.

No Eſtate-tail is preſerved by 34 H. 8. but may be barred: Except Tails created by Patent, *&c.*

No Eſtate-tail is preſerved by the Statute of 34 H. 8. cap. 20. but may be barred by a Recovery, except only Eſtates-tail created by Letters Patent, or where the Eſtate-tail is of the King's Proviſion; and not where it is of the Gift or Creation of a Common Perſon without the King's Proviſion *. 2 Rep. 15. a. b. Wiſeman's Caſe.

A Man died between Five and Six in the Morning, the firſt Day of Michaelmas Term, and afterwards that Day a Recovery was ſuffered and executed, and held to be good. 1 Rep. 106. Shelley's Caſe.

By 4 & 5 *Annæ*, it is declared, That all Declarations of Uſes or Truſts by Deed, made after the Levying or Suffering of a Fine or Recovery, ſhall be good.

By the Statute of 4 & 5 Annæ, which ſays, That whereas it had been doubted, ſince the Act of Frauds and Perjuries, 29 Car. 2. cap. 3. (which enacts, That all Declarations of Truſts of any Lands, &c. ſhall be in Writing ſigned by the Parties) whether the Declarations or Creations of Truſts or Confidences, of any Fines or Common Recoverirs manifeſted by Deed, made after the Levying or Suffering of ſuch Fines or Recoveries, are good and effectual in Law; it is thereby declared, That all Declarations or Creations of Uſes, Truſts or Confidences, of any Fine or Common Recovery of an Lands, Tenements or Hereditaments, manifeſted and proved, or which ſhall hereafter be manifeſted and proved by any Deed already made, or hereafter to be made, (by the Party who is by Law enabled to declare ſuch Uſes or Truſts) after the Levying or Suffering of any ſuch Fines or Recoveries, are and ſhall be as good and effectual in the Law, as if the ſaid Act 29 Car. 2. had never been made.

Fines and Recoveries, &c. to be in *Engliſh* by 4 Geo. 2.

And by a late Statute, For turning all Law-Proceedings, after the 25th of March 1733. into the Engliſh Language, all Fines and Recoveries, Recognizances, &c. are to be in Engliſh, and be written in Words at Length, in a common ingroſſing Hand. 4 Geo. 2. chap. 26. See the 6 Geo. 2. chap. 14.

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* Where there is a Tenant in Tail of the Gift of a common Perſon, Remainder to the King, and the Tenant in Tail ſuffers a common Recovery, it ſhall bar the Eſtate-tail, but not the Remainder to the King. *Cr. Car.* 430. *pl.* 19. *Vide Co. Litt.* 372. b.

The Eſtate tail ſhall not be barred ſo long as there are any Iſſue in Tail living, for the Remainder to the Crown cannot attach till all the Eſtate-tail is ſpent.

# Releaſe.

A Releaſe, *quid.*

**A Releaſe is the Giving or Diſcharging of a Right or Action which any Man hath or claims againſt another, or his Land (a).**

(a) These Releaſes muſt now be by Deed, otherwiſe void, *per* Statute of Frauds and Perjuries, *29 Car. 2. cap. 3.*

A Releaſe for an Hour, of a Condition, is a Releaſe for ever.

A Releaſe of a Condition, *&c.* for an Hour is a Releaſe for ever; for every Releaſe always operates by Way of Extinguiſhment. *Keil.* 88. *a.* 1 *Inſt.* 274. *a. Litt.* 467.

And if a Perſon releaſes a Condition upon Condition, the Condition will be void; but a Releaſe may be delivered as an Eſcrow, to be a Man's Deed, when ſuch a Thing is performed, which makes it in the Nature of a Condition. *Keilw.* 88.

Releaſes are of all the Right a Man hath to Lands or Releaſes of Actions.

**Releaſes are in divers Manners,** viz. **Releaſes of all the Right, which a Man hath to Lands, Tenements, and Hereditaments; and Releaſes of Actions perſonal and real,** &c. Litt. ſect. 444.

He who takes a Releaſe of a bare Right, muſt be Tenant of the Freehold.

**It is abſolutely neceſſary that he, to whom a Releaſe of all the Right that a Man hath in Lands is made, (b) have a Freehold, either in Deed or in Law, in him at the Time of the Releaſe made; otherwiſe the Releaſe will be void.** Litt. ſect. 447.

(b) This muſt be intended of a bare Right, and not of a Releaſe of a Right, whereby any Eſtate paſſeth; as to a Leſſee for Years, *&c. Co. Litt.* 265. *b.*

A Releaſe of a Right to Tenant for Years in Poſſeſſion is good.

If Leſſor releaſe to his Leſſee for Years, in Poſſeſſion in Fee, it is good by Reaſon of the Privity. *Litt. ſect.* 459. * And ſhall enure by Way of enlarging his Eſtate. *Litt. ſect.* 465.

* But not until the Leſſor had entred.

Releaſes operate either by Way of Enlargement, *mitter l'Eſtate, mitter le droit*, or Extinguiſhment.

**Releaſes work ſeveral Ways, ſome by Way of Enlargement of Eſtates, ſome by Way of** Mitter l' Eſtate, **(c) ſome by Way of** mitter le

(c) Upon a Releaſe which enures by Way of enlarging of le droit, and ſome by Way of Extinguiſhment. Co.Litt. 273. b.

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of an Eſtate, or of *mitter le Eſtate*, an Uſe may be limited, or a Rent may be reſerved; but not on a Releaſe or Way of *Mitter le Droit*, or Confirmation, which enures by by Way of Extinguiſhment. 13 *Rep.* 55. *Co. Litt.* 123. *b.*

A Uſe may be limited, or a Rent reſerved, on a Releaſe, which enures by Way of Enlargement, or *mitter l'Eſtate*; but not by Way of *Mitter le Droit*, or Extinguiſhment.

If Leſſor releaſe to Leſſee for Years, it inlarges his Eſtate for Life; but if he releaſe to him and his Heirs, he has a Fee.

1. By Way of enlarging of an Eſtate (a), as where Lands are let for Years, and the Leſſor releaſes to the Leſſee all his Right in the Lands, this enlarges it for the Leſſee's Life; but if the Releaſe is to him and his Heirs, then it is a Fee. Litt. ſect. 465.

Privity, Eſtate, and ſufficient Words in Law, are required in a Releaſe to enlarge an Eſtate.

To a Releaſe which enures by Way of Enlargement of an Eſtate, there is not only required Privity, but an Eſtate alſo, and ſufficient Words to raiſe or create a new Eſtate. Co. Litt. 73. b.

If one Jointenant releaſe to another all his Right, it enures by Way of *mitter l'Eſtate*, without the Word *Heirs*.

2. By Way of Mitter l' Eſtate, as if a joint Eſtate is made to three in Fee, and one releaſe to one of the others all his Right, this enures by Way of Mitter l' Eſtate, and paſſes a Fee-ſimple without the Word (b) Heirs. Co. Litt. 273. b.

To a Releaſe *mitter l'Eſtate* there muſt be Privity.

If Diſſeiſee releaſe to Diſſeiſor, it enures by Way of *Mitter le Droit*.

3. By Way of Mitter le Droit; as if a Man is diſſeiſed, and releaſes to his Diſſeiſor all his Right, the Diſſeiſor hath ſo far his Right, that the Eſtate which before was wrongful is hereby become lawful and right (c). Litt. ſect. 466.

Where a Releaſe is made to the Tenant of the Land, who cannot have the Thing releaſed, as a Rent-charge, Common, *&c.* it enures by Way of Extinguiſhment.

4. By Way of Extinguiſhment; as where he, to whom the Releaſe is made, cannot have that which is releaſed to him; as if a Lord releaſes to the Tenant all the Right which he hath in the Seigniory, or in the Land, &c. or in a Rent-charge or Common, &c. because the Tenant cannot have what is releaſed to him, as he may not have Service to receive of himſelf, it ſhall work by Way of Extinguiſhment. Litt. ſect. 479, 480.

(a) When a Releaſe doth enure by Way of enlarging an Eſtate, there muſt be Privity of Eſtate. *Co. Litt.* 272. *b.*

(b) *Note*; To a Releaſe which enures by Way of *Mitter l'Eſtate*, there muſt be Privity of Eſtate at the Time of the Releaſe. *Co. Litt.* 273. *b.*

(c) Here needs no Privity, becauſe the Diſſeiſor is ſeiſed, and in Poſſeſſion.

## A Releaſe.

The Form of a Releaſe.

KNow all Men by theſe Preſents (a), That I A. B. of, &c. have remiſed, releaſed, and quit-claimed (b); and do, for me and my Heirs, remiſe, releaſe, and for ever quit-claim to C. D. of, &c. and his Heirs, all the Right (c), Title, Claim and Demand, which I have, or by any Means may have, of, in and unto one Meſſuage, with the Appurtenances in D. in the County of S. To have and to hold unto the ſaid C. D. his Heirs and Aſſigns for ever.

May be as well by Indenture as Deed-Poll.

(a) This may as well be done by Indenture as Deed-Poll; and needs no other Execution than Sealing and Delivery, and will operate without any Conſideration.

What Words are neceſſary in it.

(b) It is neceſſary to have theſe Words in every Releaſe, they being *Littleton's* own Words; but there are other Words of Releaſe, as *Renunciare & acquietare.* So likewiſe if the Leſſor grants to the Leſſee for Life, that he ſhall be diſcharged of the Rent; this is a good Releaſe in Law. *Litt. ſect.* 532. and *Co. Litt.* 264. *b.*

A Releaſe in Law.

A Right, what.

(c) Right in general Signification includes not only a Right, for which a Writ of Right doth lie; but alſo any Title or Claim, either by Force of any Condition, or the like; for which no Action is given by Law, but only an Entry. *Co. Litt.* 265. *b.*

A Releaſe to Tenant for Life or Years, enures only for Life, without the Word *Heirs:*

But a Releaſe to him and his Heirs paſſes an Inheritance.

If I let Lands for Life or Years, and releaſe all the Right which I have, without the Word Heirs (d), it is but an Eſtate for Life; but if I releaſe to him and his Heirs, or to him and the Heirs of his Body, then the Inheritance paſſeth. Litt. 465.

Tenant for Life leaſes for Life, Remainder in Fee: If Leſſor releaſe to his Leſſee's Tenant for Life, tho' without the Word *Heirs,* yet he is for ever barred:

And it ſhall enure to him in Remainder.

(d) But if my Tenant for Life letteth the Land for Term of another's Life, the Remainder to another in Fee; now if I releaſe to him to whom my Tenant made a Leaſe for Life, I ſhall be barred for ever; although no Mention is made of his Heirs: For at the Time of the Releaſe made, I had no Reverſion, but only a Right to have the Reverſion; for by ſuch Leaſe and Remainder over the Reverſion was diſcontinued; and my Releaſe ſhall enure to him in Remainder. *Litt. ſect.* 470.

8 *Rep.* 153. *b.* Why Rights, Titles and Actions may be releaſed.

All Rights, Titles, and Actions, may by the Prudence and Policy of the Law be releaſed to the Ter-Tenant, for his Repoſe and Quiet, and for the Avoidance of Contention and Suits: To the end that every one may

A Right or Title to a Freehold may be releaſed five Ways, whether in Poſſeſſion or *futuro*.

may live in his Vocation, in Peace and Plenty. And therefore a Right or Title to a Freehold or Inheritance may be releaſed, be it in Poſſeſſion or Futuro (a), five manner of Ways.

Releaſe to the Tenant of the Freehold without Privity.

I. To the Tenant of the Freehold, in Deed or in Law, without any (b) Privity.

II. To him in Remainder.

III. To him ſeiſed of the Reverſion, without any Privity; but an Eſtate cannot be enlarged without Privity as the Leſſor releaſing to his Leſſee for Years in Fee, &c. Co. Litt. 272. b.

Releaſe to him who has Right only in reſpect of Privity.

IV. To him who hath Right only in reſpect of Privity; as if the Tenant is diſſeiſed, the Lord may releaſe the Services in reſpect of the Privity and Right, without any Eſtate.

In reſpect of Privity without Right.

V. In reſpect of Privity only without Right; as if Tenant in Tail make a Feoffment in Fee, the Donee in Tail after the Feoffment hath not any Right: And yet in reſpect of Privity only, the Donor may releaſe to him the Rent, and all Services ſaving the Fealty. 10 Rep. 48. b. See for theſe five manner of Ways, Raym. 147.

A Releaſe paſſes no Eſtate, but to him who hath an Eſtate in Privity; not in reſpect of Right, or Privity only.

But no Eſtate can paſs by the Releaſe, but to him who hath an Eſtate in Privity (c), and not in reſpect of the Right or the Privity only. 10 Rep. 48. a. b. Co. Litt. 273. b.

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(a) That is in Reverſion or Remainder. *Co. Litt.* 265. *a.* And not any Right that hereafter he ſhall have; for theſe Words are void. *Litt. Sect.* 446. For if a Man quit-claim his Right before he has any Right in him, the Quit-claim is void. 8 *Rep.* 47. *b.*

Privity is Fourfold.

1. Privity in Eſtate.

(b) Privity is fourfold, 1. Privity in Eſtate between the Donor and Donee. *Co. Litt.* 271. A Leſſor and Aſſignee of the Leſſee. 3 *Rep.* 23. *a.*

2. Privies in Blood.

2. Privies in Blood, as from the Heir to the Anceſtor, or between Co-partners, *&c.*

3. Privies in Repreſentation.

3. Privies in Repreſentation, as Executors to the Teſtator.

4. Privies in Tenure.

4. Privies in Tenure, as Lord and Tenant, *&c.* *Co. Litt.* 271. *a.*

Privies in Contract.

Alſo there is a Privity of Contract only, which is perſonal, and extends only to Leſſor and Leſſee. 3 *Rep.* 23. *a.*

Privies in Contract and Eſtate.

And alſo Privity of Contract and Eſtate together, as between Leſſor and Leſſee himſelf. *Ibid.*

A Releaſe to Tenant at Sufferance is void.

(c) Releaſe to a Tenant at Sufferance is void, for want of Privity. 3 *Leon.* Caſe 204. *Cro. Jac.* 184. *pl.* 9.

Where one Joint-Tenant grants to another, this amounts to a Releaſe. Raym. 187.

Every Releaſe to him in Reverſion or Remainder enures alſo to the Tenant of the Freehold: So Releaſe to Tenant for Life enures to them in Reverſion.

Every Releaſe to the Reverſioner or Remainder-Man ſhall aid him who hath the Freehold, as well as him to whom ſuch Releaſe is made, if he can have the Deed to plead (a). Litt. ſect. 452. So where a Releaſe is made to Tenant for Life, it ſhall inure to him in Reverſion or Remainder. Litt. ſect. 453.

(a) All Deeds muſt be pleaded with a *Profert in Curia.* And upon a Demand of Oyer of the Deed, the Suit muſt ſtay until it be produced.

Upon Oyer of a Deed, the Suit muſt ſtay till it be produced.

But Releaſe by Tenant for Life to Reverſioner is void.

Tenant for Life releaſes to him in Reverſion, it is void by way of Releaſe (b); and it cannot be a Surrender, for want of proper Words: But if Tenant for Life grants to him in Reverſion, this is a Surrender in Law. Cro. Jac. 169. pl. 9. Dyer 251. Cro. Eliz. 21. pl. 2. 4 Mod. Rep. 151. 3 Mod. 301. 2 Vent. 206. Show. Par. Ca. 150. 3 Lev. 284. 1 Lev. 144. 1 Keb. 807.

(b) Becauſe Tenant for Life is in Poſſeſſion, and not the Releſſee.

A Releaſe of all the Right he ſhall or may have is void.

But if a Warranty annexed, it ſhall bar him and his Heirs.

A Releaſe of all the Right which a Man ſhall or may have is void; for no Right can paſs by thoſe Words, but ſuch only as the Releaſor hath at the time of the Releaſe made: (c) But if there is a Warranty annexed, it ſhall bar him and his Heirs, if a future Right deſcends. Litt. ſect. 446.

(c) Tho' if a Man diſſeiſe another, and makes a Feoffment, and after the Right deſcends upon him, yet he ſhall not enter againſt his own Feoffment; but if he dies his Heir ſhall enter. *Co. Litt.* 265.

If Diſſeiſor enfeoff another, and after the Right deſcends to him; yet he ſhall not enter; but on his Death his Heir may.

A Releaſe enuring to enlarge an Eſtate operates not without Poſſeſſion.

A Releaſe which enures by way of enlarging of an Eſtate, cannot work without a Poſſeſſion: For before Poſſeſſion there is no Reverſion: As if a Leaſe is made to begin at Michaelmas, reſerving Rent, and before the Day the Leſſor releaſes all the Right which he hath in the Land, this cannot enure to enlarge the Eſtate; (d) but by reaſon of the Privity it ſhall operate to extinguiſh the Rent. Co. Litt. 270. a. b.

(a) But if a Man make a Leaſe for Years, the Remainder for Years, and the firſt Leſſee doth enter; a Releaſe to him in the Remainder for Years is good to enlarge his Eſtate. *Co. Litt.* 270.

Where a Releaſe to a Remainder-Man is good.

How a Releaſe to be made, when in Truſt, to the Uſe of the Releſſee, &c.

Where a Releaſe is made, Habendum to a Man, his Heirs and Aſſigns for ever; (if it is in Truſt for J. S.

and his Heirs) you go further and ſay: To the only Uſe and Behoof of the Releaſee, his Heirs and Aſſigns for ever: (a) In Truſt, nevertheleſs, for the ſaid J. S.

If the Words to the Uſe of, &c. are not in the Deed, it will not be executed by the Statute.

And if the Words to the Uſe of, &c. be not in the Deed, the Truſt will be void, and the Eſtate not executed by the Statute of Uſes.

A Releaſe of all Actions, Suits, and Quarrels, releaſes not Covenants to do a collateral Act; but a Releaſe of all Covenants will.

A Man covenants to do a collateral Act; before Breach of this Covenant a Releaſe of all Actions, Suits, and Quarrels ſignifies nothing: For before Breach there is not any Duty or Cauſe of Action. For the Breach ought to precede; but had it been a Releaſe of all Covenants; there, before a Breach, it would have barred. 1 Rep. 112. b. 5 Rep. 71. a. Cro. Jac. 170. pl. 11.

A Releaſe of all Actions is better than all Actions real and perſonal.

Note; A Releaſe of all Actions generally, is better than to ſay all Actions real and perſonal. Litt. ſect. 500.

A Covenant or Promiſe not broken will not be releaſed by a Releaſe of all Demands.

A future Act; (viz. a Covenant or Promiſe not broken) cannot be releaſed by a Releaſe of all Demands.

But a Releaſe of Promiſes and Covenants will.

But a Releaſe of all Promiſes or Covenants ſhall releaſe a Promiſe not broken. Lut. 249, 250. 3 Leon. Caſe 105. See Albanie's Caſe, 1 Rep. 110. b. to 112.

A Man cannot releaſe a thing which he hath no Demand to. Cro. Jac. 222. pl. 2. Nor diſcharge a Duty not then in Being. Cro. Eliz. 897. pl. 20. Co. Litt. 292. b.

A Releaſe of all Demands had, or ſhall have, releaſes not a future Rent.

A Releaſe of all Demands that the Plaintiff had or ſhould have againſt the Defendant, before any Rent due, doth not releaſe the accruing Rent. Co. Litt. 291. b. 1 Lev. 99. 2 Lev. 210. 2 Salk. 578. 3 Mod. 278. 2 Mod. 282.

A Covenant not to ſue is an abſolute Releaſe, and may be pleaded in Bar.

But not to ſue in a particular Time is not.

A Covenant not to ſue is an abſolute Releaſe, and may be pleaded in Bar; but not to ſue within a particular time is not, and if a Suit is brought within the time, the Remedy muſt be by Action of Covenant. Show. Rep. 46, 47. Cro. Eliz. 352. pl. 7. 2 Salk. 573, 575. 3 Salk. 298.

A Poſſibility not to be releaſed.

Nor Bond to the Uſe of another, and when given on a particular Occaſion that reſtrains the Words.

A Poſſibility cannot be releaſed. 10 Rep. 48. a. If a Bond be entered into to A. to the Uſe of B. This Bond cannot be releaſed by A. 1 Lev. 235. And if a Releaſe is made on a particular Occaſion, that ſhall reſtrain the Generality of the Words, ſo as to bar only for that purpoſe. 2 Lev. 214. 3 Lev. 275. 2 Mod. 277.

Where a Releaſe to one will diſcharge another.

Where two are bound jointly, if the Obligee releaſes to one of them, this ſhall diſcharge the other: 3 Salk. 298. So a Releaſe by a Lord to one Jointenant, extends to both of the Jointenants; and when a Promiſe is of two Parts, a Releaſe of one Part will be

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A Releaſe to make a Tenant to the *Præcipe* muſt be made to the Uſe of, &c.

(a) In a Releaſe to make a Tenant to the *Præcipe*, made to *A. B.* and his Heirs, it muſt be alſo ſaid to the Uſe of *A. B.* his Heirs and Aſſigns for ever. See 2 *Vent.* 312.

be a Releaſe of the other Part. Co. Litt. 232. 1 Cro. 648.

Beſt Releaſe is the Releaſe of all Demands.

The Releaſe of all Demands, is the beſt Releaſe of all, and the moſt effectual to bar Actions, Rights, &c. And by it all Debts, Duties, Obligations*. Recognizances, Statutes, Judgments, Executions, and all manner of Actions Real and Perſonal, &c. are releaſed and diſcharged. Co. Litt. 291. 5 Rep. 71. 8 Rep. 153. Dyer 56. 1 Vent. 314.

Not extend to Obligations ſubſequent.

But this Releaſe doth not avoid an Obligation ſubſequent to the Releaſe. Litt. 512.

*Uſque Datum.*

A Releaſe uſque Diem dati of the Releaſe, &c. excludes the Day whereon made. 2 Mod. 289. 4 Mod. 182.

Acknowledgment a Releaſe.

An Acknowledgment under Hand and Seal, that a Debt is ſatisfied, is a good Releaſe. 9 Rep. 52.

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* But a Releaſe of all Demands to the perſonal Eſtate of an Inteſtate releaſes not a Bond before Judgment and Execution. *Salk.* 575.

# Remainders.

A Remainder, what it is.

**A Remainder is an Eſtate limited in a Deed, to commence after the Determination of a particular Eſtate** (a), **and created** (b) **together with the ſame** (c) **whereon it muſt neceſſarily depend. For the very Word** Remainder **imports as much, viz. it muſt be a Remainder of ſomething which is.** Vaugh. 269. Raym. 143. Co. Litt. 143. a. Modern Caſes 112.

The Import of the Word *Remainder.*

It muſt be of ſomething which is.

(a) A Remainder may be upon a particular Eſtate, but not upon an Eſtate in Fee; though there may be a contingent Uſe, which ſhall make the Fee to ceaſe, and transfer the Fee to another; but it muſt be circumſcribed to certain Bounds and Limits. *Per Treby. Mich.* 9 *W.* 1697. *in Canc.*

It may be upon a particular Eſtate.

Not upon an Eſtate in Fee.

But there may be a contingent Uſe circumſcribed.

(b) *Co. Litt.* 143. *a. Noy's Maxims* 73. 3 *Rep.* 20. *a.*

(c) And to continue until the Uſe comes *in eſſe. Raym.* 413. But where the Grantee took nothing, the Remainder is void: For there cannot be a Remainder of that which is not. *Co. Litt.* 143. *a.* 2 *Rep.* 51. *a.*

Where the Grantee takes nothing, the Remainder is void, and why.

**The particular Eſtate and the Remainder** (d), **make in Law but one Eſtate, and take Effect at one** (e) **Time.** Co. Litt. 49. b.

The particular Eſtate and the Remainder make but one Eſtate.

(d) A Remainder muſt veſt either during the particular Eſtate, or at the leaſt *eo inſtante* that the particular Eſtate determines; and there muſt not be a Mean between. 1 *Rep.* 66. *Raym.* 413. 2 *Rep.* 51. *a. Salk.* 228. 3 *Mod.* 309.

It muſt veſt during the particular Eſtate, or *eo inſtante* that it determines.

(e) Where a Leaſe is made for Years, Remainder for Life, in Tail or in Fee, here the Leſſor muſt make Livery to the Leſſee for Years, otherwiſe nothing paſſes to them in Remainder; but the Leaſe for Years is good without it. *Litt. ſect.* 60. *Co. Litt.* 49. *a. b.* 5 *Rep.* 94. *Barwick's* Caſe. 2 *Rol. Abr.* 8.

A Leaſe for Years, Remainder for Life, in Tail or in Fee, Livery muſt be made to the Leſſee for Years.

A Remainder to Heirs on a Leaſe for Life is void; but good on Feoffments, &c. to Uſes.

If a Man make a Leaſe for Life, with Remainder to his Heirs, or to himſelf and his Heirs, or the Heirs of his Body, the Remainder is void, and his Eſtate is not altered; but 'tis otherwiſe if he convey the Land by way of Uſe; as if he make a Feoffment to the Uſe of himſelf for Life, Remainder to the Heirs Males of his Body, this is an Entail executed in him; and ſo it is if he covenant to ſtand ſeiſed to Uſes. 1 *Vent*. 37, 8. 1 *Mod*. 159. 3 *Salk*. 292.

Contingent Remainders are to have a Freehold to ſupport them.

But where a Perſon conveys Land to the Uſe of himſelf for 99 Years, Remainder to his Heirs Males, *&c.* this Remainder is not good for want of a Freehold to ſupport it, a Freehold being neceſſary to ſupport every contingent Remainder. *Moor* 486. 4 *Mod. Rep*. 259. 2 *Salk*. 679. *Comb*. 254, 312. 3 *Salk*. 299.

He who takes by Remainder need not be Party to the Deed.

He who takes an Eſtate by way of Remainder, need not be Party to (a) the Deed. Co. Litt. 378. b. Litt. ſect. 374. Raym. 143.

A Leaſe to B. *Habendum* to B. and alſo to *C.* and *D.* for their Lives;

B. only takes preſently;

the other cannot take any Way but by Remainder; and why.

A. ſeiſed in Fee leaſes to B. Habendum to B. and alſo (b) to C. D. and E. for their Lives, and the Life of the longer Liver of them ſucceſſive: (c) None can take immediately but B. becauſe he is only Party to the Deed, and the reſt are only named in the Habendum; then they cannot any Ways take but by way of Remainder; yet in this Caſe they could not do ſo, becauſe of the Incertainty who ſhould take. Raym. 143. Cart. 145. Hob. 313, 314. 2 Rol. Abr. 68. Cr. Ja. 564.

He who is not Party to the Deed cannot take a preſent Eſtate, but he may a Remainder.

(a) He who is no Party to an Indenture cannot thereby take a preſent Eſtate; but by way of Remainder he may. *Raym*. 143. *Carter* 60. *Co. Litt*. 230. *b.*

A Remainder is moſt proper to be limited in the *Habendum*.

(b) When a Remainder is limited, it is moſt proper to come in the *Habendum*. *Raym*. 143.

(c) But doth not ſay, *Sicut nominantur in Charta*; for if ſo, it would have made it good. *Raym*. 143. 20 *Eliz. Dyer*.

How it is where an Eſtate for Life is limited by the ſame Conveyance:

And where they are firſt Tenants for Life, and one gets the Fee.

Where an Eſtate for Life, and in Fee, is limited by one and the ſame Conveyance, then the one may have the Eſtate for Life, and the other the Fee-ſimple jointly; but when they are firſt Tenants for Life, and afterwards one of them gets the Fee-ſimple, or the Fee deſcends to one of them, there the Jointure is ſevered. *Law of Entails* 51.

A Man may take a Remainder by way of Uſe.

A Man may take a Remainder by way of Uſe (d), as where the Limitation is, Remainder to the Uſe of A. B. &c. Poph. 82. Carter 145.

(d) It is neceſſary to put in the Word *Uſe*.

A Man covenants to ſtand ſeiſed to the Uſe of his Son, Remainder to *J. S.* a Stranger, no Uſe ariſes to *J. S.*

Becauſe there is no Conſideration.

**Where a Man in Conſideration of Blood covenants to ſtand ſeiſed for the Uſe of his Son, Remainder to J. S. a Stranger; no Uſe will ariſe to J. S. (a) the Stranger, becauſe there is no Conſideration of Blood, or other Conſideration (b) whatſoever.** Carter 146. Wiſe-man's Caſe. 2 Rep. Earl of Bedford's Caſe, in 1 Rep. quoted in the Rector of Chedington's Caſe.

Nor can it ariſe upon a Bargain and Sale inrolled, becauſe no Party to the Deed.

(a) Neither can it ariſe by Bargain and Sale, inrolled, becauſe the Remainder Man can be no Party to the Deed. But I take it that a Remainder will paſs by Leaſe, in Conſideration of Money, and a Releaſe: For that a Releaſe is a Common Law Conveyance.

But by Leaſe and Releaſe, it will ariſe upon a good Conſideration.

(b) But if there were a good Conſideration it would ariſe. *Carter* 175.

A Man covenants to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Wife for Life, then to ſuch Perſon as ſhe ſhould appoint, no Uſe ariſes to the Perſon appointed.

**Where a Man covenants, in Conſideration of natural Love and Affection, to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to his Wife for Life, with power for her to limit over the Eſtate to ſuch Perſon as ſhe ſhould appoint, no Uſe can ariſe to the Perſon appointed.** Fitz-Gib. 301. Caſes in Chancery and King's Bench, from fourth to ſeventh Geo. II. S. C. adjudged.

Croſs Remainders in Deeds and Wills; but not allow'd by Implication.

**There are Croſs Remainders in Deeds and Wills, as where the Teſtator deviſeth an Eſtate to two Perſons, that each ſhall be the other's Heir, &c. tho' ſuch Croſs Remainders are ſeldom or never allow'd by Implication; and are rarely among three or more (c).** 2 Roll. Rep. 281. 3 Nelſ. Abr. 98.

When Croſs Remainders may be among three or more Sons.

(c) But if a Man Deviſe one Acre of Land to *A.* the eldeſt Son, and the Heirs Male of his Body, another Acre to *B.* the ſecond Son in like manner, and another Acre to *C.* the third Son; and if they all die without Iſſue of their or any of their Bodies, or either of them, Remainder over; here are Croſs Remainders amongſt all the three Sons. 1 *Ventr.* 224. *Dyer* 303.

What Remainders are good without a particular Eſtate.

If Remainders are limited by a Deviſe; they are good without a particular Eſtate; but not where the Eſtate paſſes by Livery and Seiſin, *&c.* It is the ſame in caſe of an Uſe in Remainder, by the Statute of Uſes. *Dyer* 126. *Plowd.* 403.

A Deviſe of a Remainder to a Stranger by Will is good.

Difference between a Remainder created by Will and where by the Statute of Uſes.

**A Man may deviſe a Remainder to a Stranger by his Will: And there is a Diverſity between a Remainder created by Conveyance to Uſes, and by Will; for in a Conveyance to Uſes there may be an Interpoſition of other Eſtates, and the Remainder ſtand good: Becauſe this Remainder depends and hangs on the**

the firſt Root; but in a Will the Remainder ſettled muſt follow the Rules of Law. Carter 175.

A Remainder may be convey'd away by Grant.

It lies in Grant, not in Livery.

By Bargain and Sale.

* Now there needs no Attornment ſince Statute of 4 & 5 *Annæ*.

A Man ſeiſed of a Remainder, may convey it away by (a) Grant. 3 Rep. 51. a. By Bargain and Sale. 2 Rep. 53. b. To the Grant there muſt be * Attornment. Litt. ſect. 551, 569, 578.

By Fine.

He may grant over his Remainder in Fee.

By the Remainder-Man in Tail.

By Fine and Deed to lead the Uſes; as where Tenant in Tail, Remainder in Tail, Remainder in Fee; (b) he in Remainder in Tail levies a Fine in the Life of the firſt Tenant in Tail; this ſhall bar himſelf and all his Iſſue claiming under him.

A good Tenant to the *Præcipe* makes a good Recovery.

A Recovery ſuffered by Tenant in Tail, where there is a good Tenant to the Præcipe, ſhall bar all Remainders whatſoever.

Where the Tenant in Tail may bar a Term for Years, to commence after the Eſtate-tail is ſpent, and where not.

Where an Eſtate is limited to the firſt Son in Tail, and for Default of ſuch Iſſue, to Truſtees for a hundred Years, to raiſe Portions for Daughters; Proviſo, that if his Heir Male pay one thouſand Pounds to every of his Daughters within two Years after his Death, then this Limitation for Years to be void; the Money is not paid; here the firſt Son, when he comes to twenty-one, may ſuffer a Recovery, and by this Recovery the Remainder for Years ſhall be barred (c); but if the Leaſe for a hundred Years was made by another Deed precedent to the Eſtate-tail, there a Recovery will not touch it. Goodyear and Clark, Trin. 12 Car. 2. Rot. 1043. in B. R.

Remainder-Man in Tail grants over his Remainder for Life;

Remainder to the King upon Condition;

Tenant in Tail ſuffers a Recovery; Eſtate and Condition barred.

The ſuffering a Recovery by Tenant in Tail in Poſſeſſion, ſhall bind all Perſons till it comes to the Crown; where a Remainder is not in the Crown by the Proviſion of the

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(a) It lies in Grant and not in Livery. 2 *Rep.* 53. *b.* With Attornment it is good, otherwiſe not. *Litt. ſect.* 551, 569, 578.

(b) Nay he may only grant over his Remainder in Fee, and it would be good. 3 *Rep.* 51. *b.* So he may deviſe it. *Lloyd's Caſe*, 4 *Annæ in B. Reginæ.*

(c) A Gift is made in Tail, Remainder in Fee, he in Remainder grants his Remainder to another for Life, the Remainder to the King in Fee, upon Condition the Tenant in Tail ſuffers a Recovery: This Recovery ſhall bar the Eſtate of the Tenant for Life, and the Condition alſo. 2 *Rep.* 52. *a. b.* A Condition that runs with the Land can't be barred by Recovery; *aliter* of a Condition collateral. *Salk.* 570.

Crown, notwithſtanding 34 *H.* 8. *cap.* 20. *Moor, Caſe* 466. 2 *Rep.* 15. *b.* 16. *a.* *Yel.* 149. See 3 *Leon. Caſe* 84. *Co. Litt.* 372. *b.*

Tenant in Tail, Remainder to the King, levies a Fine, hath Iſſue and dies, the Iſſue are barred, and yet the Eſtate in Remainder is not diſcontinued; for by the Fine, an Eſtate in Fee deſcendible, * *viz.* a baſe Eſtate, determinable upon the Eſtate-tail, did paſs to the Conuſee. See *Cro. Car.* 430. *pl.* 19. See in Title *Recovery.*

* *Viz.* A baſe Fee deſcendible to the Conuſee and his Heirs, during the Life of the Tenant in Tail, and his Iſſue.

A contingent Remainder to a Man's Son, after Remainder to his Wife, is not deſtroyed by Attainder of the Father.

Lands were granted to Tenant for Life, Remainder to his Wife for Life, with Remainder to his firſt and ſecond Son, *&c.* in Tail, Remainder to the right Heirs of the Tenant for Life, who afterwards committed Treaſon, and then his Son was born, and the Father was attainted: It was adjudg'd, that whether the Son was born before or after the Attainder, the Contingent Remainder to him was not diſcharged by the veſting of the Eſtate in the Crown, during the Life of the Father; becauſe of the intermediate Eſtate to the Wife for Life, which ſupported that Remainder. 2 *Salk.* 576.

Where Right of Entry preſerves a Remainder.

And if *W. R.* is Tenant for Life, with Remainder to *R. R.* for Life, Remainder to *C. D.* Remainder to *A. B.* and his Heirs, *&c.* If *W. R.* and *R. R.* join in a Fine, the Right of Entry of *C. D.* preſerves the Contingent Eſtate over. 1 *Mod.* 92.

He in Remainder after an Eſtate-tail grants a Rent-charge, leaſes for Years, acknowledges a Statute, *&c.* Tenant in Tail ſuffers a Recovery, this bars them all.

Where he in Remainder after an Eſtate-tail grants a Rent-charge, or makes a Leaſe for Years, or acknowledges a Statute, and afterwards Tenant in Tail ſuffers a Recovery, and dies without Iſſue; the Poſſeſſion ſhall not be ſubject to theſe Charges, Leaſes or Statutes of him in Remainder, but they are all deſtroyed by the Recovery. 2 *Rep.* 38. *b.* and *Capel's* Caſe, 1 *Rep. Mo.* 158. *Cr. Eliz.* 718. 2 *Roll. Abr.* 396. *Mo.* 154. 4 *Leon.* 150, *&c.* *Poph.* 5, 6. Becauſe the Recovery is under the Eſtate of the Tenant in Tail, not ſubject to theſe Incumbrances.

Where it is a contingent Remainder, and where an executory Deviſe.

**Where by Will a Contingency (a) is limited to depend upon an Eſtate of Freehold capable of ſupporting it; there it ſhall never be conſtrued to be an executory Deviſe, but only a contingent Remainder.** 3 Saund. 388. 3 Lev. 434. Carth. 310. Vide Raym. 28.

When a contingent Remainder muſt veſt.

(a) A Contingent Remainder muſt veſt during the particular Eſtate or *eo inſtante* that it determines. *Raym.* 413. *Plow. Com.* 25. *b.* *Salk.* 228. 3 *Mod.* 309.

If the Remainder is deſtroyed before the Contingency happens, it can never ariſe.

Neither a Fine or Recovery can deſtroy an executory Deviſe, and why.

But neither a Fine nor Recovery, nor any Thing elſe, can deſtroy executory Deviſe: For that is not a Remainder, but an independent Thing from a Remainder. *Vide Pells* and *Brown*'s Case, *Cro. Jac.* 590. *pl.* 13. *Chudleigh*'s Case, 1 *Co.* 1 *Roll. Abr.* 611. *Palm.* 131. 2 *Roll. Rep.* 213. 2 *Leon.* 129. *Hugh.* 272.

What an executory Deviſe is, and why it can't be cut off.

A Recovery ſhall not bar an executory Deviſe. *Carter* 53. And what an executory Deviſe is. *Ibid.*

Upon a Deviſe, whether it were an Eſtate-tail, or an executory Deviſe, was the Queſtion; alſo whether a contingent Remainder or no.

Where a Man deviſes to his eldeſt Son for ninety-nine Years, if he ſo long lives, to commence at his Death, and after the Determination of that Eſtate, then to the Heirs Male of the Body of his Son, and for Want of ſuch Iſſue, Remainder to his ſecond Son in Tail; Remainder to his own right Heirs: The Deviſee for Years ſuffers a Recovery after his Father's Death.

And the Queſtion was, Whether the eldeſt Son had an Eſtate-tail by this Deviſe, or that it was an executory Deviſe? For if he had an Eſtate-tail, then it was docked by this Recovery.

No Limitations over upon an executory Deviſe: It muſt be a contingent Remainder.

*Curia*: This can be no executory Deviſe; if it ſhould, the Limitations over are void: But it muſt be a contingent Remainder, and then it is void; becauſe there is nothing but a Term for Years to ſupport it. 4 *Mod.* 255, 256, 257, 258, 259. 1 *Salk.* 226. S. C.

A Remainder ought to paſs preſently to him in Remainder, or be in Abeiance.

A Remainder ought to paſs out of the Leſſor preſently, (a) either to him in Remainder, or elſe to be in Abeiance and Cuſtody of the Law. 3 Rep. 26. a.

Upon the Livery to the Leſſee, though Leſſee for Years only.

(a) Upon the Livery; for there muſt be Livery to the Leſſee to paſs a Remainder of a Freehold, tho' a Leſſee for Years only. *Vide Co. Litt.* 227. *a.* 49. *a. b.* A Leaſe for Years to commence at *Michaelmas*; Remainder over in Fee to another: If the Leſſor makes Livery before *Michaelmas*, the Livery is void. *Co. Litt.* 217. *a.* 5 *Rep.* 94. *Plowd.* 156. *a.* See more in Title *Feoffment*.

A Leaſe for Life, Remainder to the right Heirs of *J. S.* then living.

This can't veſt in the Heir of *J. S.* becauſe he is not *in rerum natura.*

It is good only upon the Contingency of Leſſee dying during the Life of *J. S.*

The Fee is in Abeiance during the Life of *J. S.*

Where a Leaſe is made for Life, the Remainder to the right Heirs (b) of J. S. (J. S. then living) the Inheritance paſſes preſently out of the Leſſor, but cannot veſt in the Heir of J. S. for he is not in rerum natura: For non eſt hæres viventis; ſo that the Remainder is good upon the Contingency of J. S. dying during the Life of the Leſſee, (the Fee-ſimple being in Abeiance during the Life of J. S.) but if

A Diverſity where the Limitation is in general Words, as to the right Heirs of *J. S. &c.* and when particularly named.

(b) *Note*; A Diverſity where a Limitation of the Remainder is in general Words, as to the right Heirs of *J. S.* or to him who ſhall firſt come to St. *Paul's*, or the like, and when the Remainder limited is particularly named by ſpecial Words; as to *Jane* the Wife of *J. S.* or to the Mayor and Commonalty of *J.* In the former Caſe, a Perſon not *in eſſe* at the Time of the Creation of the firſt Eſtate, may

Where the Remainder ſhall never veſt.

**If J. S. ſurvive the Leſſee, then the Remainder ſhall never veſt: Becauſe there is no Perſon to take at the Time when the Remainder ſhould take Effect.** Co. Litt. 342. b. 3 Rep. 20. a. 2 Rep. 52. b.

may take a Remainder by Purchaſe, if he ſhall happen to be *in eſſe* before the particular Eſtate determined: But in the latter, if there be no ſuch Perſon as *Jane* the Wife of *J. S.* or Mayor and Commonalty, *&c.* at the Time of the firſt Limitation of the Remainder, although *J. S.* ſhould after take to Wife one *Jane*, or that *J.* be incorporated during the particular Eſtate, yet ſuch Remainder is void. *Moor*, Caſe 248.

Where a Remainder is void.

*Seniori puero*, a good Name to take a Remainder.

*Seniori puero* is a good Name of Purchaſe by Way of Remainder, although not *in eſſe* at the Time of the Limitation. *Ibid.*

A Leaſe for Years with Livery, Remainder to the right Heirs of *J. S.* (who is then living) this Remainder is void, and why.

**But if a Leaſe is made for Years, with Livery to the Leſſee, Remainder to the right Heirs of J. S. (J. S. then living) this Remainder is utterly void (a), becauſe during the Life of J. S. his right Heirs cannot take, and in that Caſe the Freehold ſhall not remain in the Leſſor * and expect the Death of J. S. during the Term. For although J. S. die during the Term, yet the Remainder is void; becauſe a Livery cannot expect.** Co. Litt. 217. a. 3 Rep. 20. a.

*That went out from him upon the Livery.

(a) So it is of an Uſe. *Poph.* 82.

Leaſe to *J. S.* for eighty Years, if he live ſo long, and if he dies within the Term, his Wife ſhall have it for the Reſidue: This is void as to the Wife.

A Leaſe is made for eighty Years to *J. S.* if he live ſo long; and if he die within the Term, that then his Wife ſhall have it during the Reſidue of the ſaid Term; and adjudged that the Limitation to the Wife was void. *Cro. El.* 216. *pl.* 15. *Moor*, Caſe 441.

A Man can't grant a Remainder of his Eſtate to *A.* Remainder to *B.* and why.

**A Remainder-man in Tail cannot grant his Remainder to A. Remainder to B. becauſe he having but a Remainder, hath granted all of it to A.** 2 Rep. 51. b. 52. a.

Where the Claim of a Remainder, by Virtue of a Condition, ought to be made.

**The Claim of a Remainder by Force of a Condition, ought to be made upon the (b) Land.** 2 Rep. 54. a.

(b) Tho' a Limitation determines an Eſtate without Entry or Claim, yet a Condition doth not. *Plow. Com.* 413. *a. b.* 2 *Rep.* 55. *b.* 2 *Mod.* 7.

A Limitation determines an Eſtate without Entry or Claim, but a Condition doth not.

A Man can't by any Conveyance in Poſſeſſion limit a Remainder to his right Heirs, but he may by way of Uſe.

**A Man cannot by any Conveyance in Poſſeſſion limit a Remainder to his right Heirs, but by way of Uſe he may.** Moor, fol. 720.

Where an executory Deviſe, and where a contingent Remainder.

**A. ſeiſed in Fee deviſed to B. for Life, and after his Death to the firſt Son of his Body, and the Heirs**

Male of ſuch firſt Son, and for Default of ſuch Iſſue, to C. for Life, with like Remainder in Tail Male, Remainder over, &c. The Deviſor dies, B. enters and dies without Iſſue Male, but left his Wife with Child; C. enters, then a Son is born, who brought an Ejectment.

A Contingent Remainder.

And void for want of an Eſtate to ſupport it.

This Judgment was reverſed in Parliament.

The Queſtion was, Whether it was an executory Deviſe, and that the Freehold veſted in C. till a Son born? It was held to be a contingent Remainder, and that there being no particular Eſtate in B. to ſupport it, it was void. But if it had been an executory or ſpringing Remainder (as it was called) in one, it would be ſo in all the Deviſees, and that would introduce Perpetuities. This was one Long's Caſe, which ſee quoted in 4 Mod. Rep. 259. Note; A Writ of Error was brought in the Houſe of Lords upon this Judgment, and the Judgment was reverſed; but afterwards to make ſure Work, this following Act of Parliament was made 10 & 11 W. Regis, cap. 16. intituled, An Act to enable Poſthumous Children to take Eſtates as if born in their Father's Life-time; whereby it is enacted, That where any Eſtate is already, or ſhall hereafter by any Marriage, or other Settlement, be limited in Remainder to or to the Uſe of the firſt, or other Son or Sons of the Body of any Perſon lawfully begotten, with any Remainder or Remainders to or to the Uſe of any other Perſon or Perſons, or in Remainder to or to the Uſe of a Daughter or Daughters lawfully begotten, with any Remainder or Remainders to any other Perſon or Perſons; that any Son or Sons, Daughter or Daughters, of ſuch Perſon or Perſons lawfully begotten, or to be begotten, that ſhall be born after the Deceaſe of his, her or their Father, ſhall and may, by Virtue of ſuch Settlement, take ſuch Eſtate ſo limited to the firſt and other Sons, or to the Daughter or Daughters in the ſame Manner, as if born in the Life-time of his, or their Father, although there ſhall happen no Eſtate to be limited to Truſtees after the Deceaſe of the Father, to preſerve the Contingent Remainders to ſuch after-born Son or Sons, Daughter or Daughters, until he, ſhe, or they come in eſſe, or are born to take the ſame; any Law or Uſage to the contrary notwithſtanding.

Afterwards there was an Act of Parliament made for making of Poſthumous Children to take Eſtates as if born in their Father's Life-time. 10 & 11 *W.* 3. *c.* 16.

Where the particular Eſtate is defeated, the Remainder is alſo thereby defeated.

It is regularly true, that when the particular Eſtate is defeated, the Remainder ſhall be alſo thereby defeated; that is, when the particular Eſtate and the Remainder depend upon one Title, there the Defeating of the particular Eſtate is a Defeating of the Re-

Where the Defeating of the particular Eſtate is the Defeating of the Remainder, and where not.

mainder. But where the particular Eſtate is defeaſible, and the Remainder by good Title; there, though the particular Eſtate is defeated, the Remainder is good. Co. Litt. 298. a.

He that hath a Remainder veſted, may grant or deviſe it. A Leaſe during the Life of Tenant for Life, and good.

He in Remainder of an Eſtate veſted may Grant or Deviſe the ſame; * and a Leaſe made by him in Remainder during the Life of Tenant for Life, is a good Leaſe. Cro. El. 1718. pl. 45.

What is ſufficient to ſupport a contingent Remainder.

Where the particular Eſtate continues either in eſſe, or in right of Entry; it is ſufficient to ſupport the contingent Remainder. 2 Saund. 282.

Where the particular Eſtate is merged, the contingent Remainder is gone alſo.

In all Caſes where the particular Eſtate is merged in the Reverſion, the contingent Remainder which depends upon the particular Eſtate is gone, tho' there is no deveſting of any Eſtate. 2 Saund. 386.

Where the Deſcent of the Fee prevents the contingent Remainder.

Deviſe to the firſt Son for Life, Remainder to the Son which ſhould ſurvive him; the firſt Son died: And adjudged three againſt one, That the Deſcent of the Fee upon the firſt Son prevented the contingent Remainder to the Survivor. 2 Cro. 2260. pl. 21. Ventr. 306. Pollexfen 199.

Deviſe to a Man for Life, Remainder to the Heirs of his Body now living, is a Remainder veſted, and not contingent.

Deviſe to a Man for Life, Remainder to the Heirs of his Body now living, is a ſufficient Deſignation of the Perſon, and ſhall be taken to be a Remainder veſted, and not a contingent Remainder. 2 Ventr. 313. Raym. 330. 3 Keb. 32. Poll. 457. Vide 1 Williams 229. Eq. Ca. Abr. 214, 215.

A Remainder or Reverſion expectant upon an Eſtate Tail, is no Aſſets to the Heir in Debt upon his Father's Bond.

A Remainder or Reverſion, expectant upon an Eſtate-tail, is no Aſſets to the Heir in Debt upon his Father's Bond *; nor is it of any Account in Law; becauſe it may be cut off by Fine and Recovery. 1 Roll. Abr. 269. 2 Roll. Rep. 129. 3 Lev. 287. 3 Mod. 257. Carth. 129. But 'tis otherwiſe of a Reverſion on an Eſtate for Life or Years. 1 Co. Inſt. 173. a. 6 Rep. 42. 1 Salk. 354, 5. Fareſly 42. 2 Mod. 50, 51. Hern. Plead. 320.

The Gift of a Remainder, after the Death of the Grantor is void. March. Rep. 51. And a Tenant in Tail cannot limit a Remainder over by Deed; for an Eſtate for his own Life, is as long as he can Grant. 2 Rep. 52.

Remainders over by Tenants in Tail, are void.

But where there is an Eſtate-tail, with Condition that if the Tenant in Tail aliens in Fee, &c. then the Eſtate to ceaſe, and the Land to remain to another; this is a void Remainder, and the Alienation veſts the Eſtate in the Alienee, or the Donor. 1 Lutw. 832.

So when limited after void Eſtates.

A Remainder limited after an Eſtate which is void, or impoſſible, &c. is alſo void. 2 Lev. 157.

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* Badger and Lloyd's Caſe, *Hill.* 11 *W.* *in B. R.* and afterwards affirmed in Parliament.

* But after the Eſtate Tail is ſpent, it is Aſſets. 3 *Mod.* 257.

# Reverſion.

What a Reverſion is.

A Reverſion is when the Reſidue of the Eſtate, doth always continue in him, who made the particular Eſtate; (a) or where the particular Eſtate is derived out of his (b) Eſtate. Co. Litt. 22. b.

(a) *Vide Co. Litt.* 319. the Difference between Diſcent and Purchaſe, where it is a Reverſion, and where a Remainder.

Where a Reverſion, and where a Remainder.

(b) He who hath the Poſſeſſion cannot have the Reverſion; becauſe by uniting of them, the one is drowned in the other. *Terms de la Ley.*

He that hath the Poſſeſſion, cannot have the Reverſion.

The two Significations of the Word *Reverſion.*

The Word Reverſion hath two Significations.

The one is an Eſtate left, which continues during the particular Eſtate in Being, which is the moſt common Senſe.

The other is the returning of the Land after the particular Eſtate is ended, which is the natural Senſe. Plow. Com. 160. b.

A Reverſion takes Place after a Remainder.

A Reverſion takes Place after a Remainder, where a Perſon makes a Diſpoſition of a leſs Eſtate than that whereof he was ſeiſed at the Time of making thereof. Co. Litt. 22. 142.

How it differs from a Remainder limited.

And as a Remainder is general, and may be to any Man but he that granteth the Land, for Term of Life, or otherwiſe; ſo a Reverſion is to himſelf from whom the Conveyance of the Land proceeded, and is commonly perpetual, &c.

It is an actual preſent Intereſt.

The Rent ſhall go with it.

A Reverſion is an actual preſent Intereſt, though it is to take Effect in Poſſeſſion after another Eſtate, and the Rent (c) ſhall go with it; and is not in the nature of a future Intereſt, as a Term for Years, limited to com-

(c) *Viz.* Such a Rent for which a Man may diſtrain, as a Rent out of Lands. But

Such a Rent as a Man may diſtrain for; where there can be no Diſtreſs; what Remedy for them.

Future Intereſt.

commence at the End of a former Term: For ſuch a future Intereſt ſhall not have the Rent reſerved upon a former Leaſe. 2 Vent. 328.

But where Advowſons, Commons, Tithes, Fairs, Markets, Liberties, *&c.* are let, rendring a Rent; if it be by Deed, an Action of Debt lies for it; it being good by way of Contract, but the Leſſor cannot diſtrain for it: Nor will the Rent paſs by Grant of the Reverſion, for it is not incident thereunto. *Co. Lit.* 47. *a.* 5 *Rep.* 3. *a.* Neither can the Grantee of the Reverſion bring Debt for it. 1 *Ventr.* 98. It being a Sum in groſs and recoverable only by the Contract. 1 *Ventr.* 98.

Where ſo much of the Eſtate of the Tenant in Fee, as remains in him undiſpoſed of, is called a Reverſion.

Where Tenant in Fee makes a Gift in Tail, or a Leaſe for Life or Years, or where Lands are extended by Force of an Elegit or Statute: So much of the Eſtate of Tenant in Fee, as remains in him undiſpoſed of, is called a Reverſion.

If Action of Waſte doth not lie, nor is there any Attendance, there needs no Attornment.

When the Grantee can have no Action of Waſte, and there ſhall not be any Attendancy between the Tenant and him, there the Reverſion ſhall paſs without Attornment *: For an Attornment is not neceſſary, but to have an Avowry or an Action of Waſte. 1 Dan. 610. a.

* Attornments are now taken away by 4 & 5 *Ann.*

Where there is no Tenure, Attendancy, Remainder, or Payment of Rent out of Land, there needs no Attornment. Ibid. and Co. Litt. 312. a.

Leſſee for twenty Years leaſes for ten Years, rendring Rent, and grants the Reverſion, there muſt be Attornment, before the 4 & 5 *Anna.*

If Leſſee for twenty Years leaſes for ten Years, rendring Rent, and after grants over the Reverſion, the Eſtate ſhall not paſs without Attornment; becauſe of the Attendancy and of the Rent. 1 Danv. 610.

But otherwiſe it is if there is no Rent reſerved upon the Leaſe for Years; for then there is no Attendancy to be made. Ibid.

It will paſs by Grant and Attornment in the Lives of both Parties.

A Reverſion will paſs by Grant and Attornment, (a) in the Lives of both Grantor and Grantee. Carter 5. Vide Title Grant.

Attornments are gone by the Act of 4 & 5 *Anna, For the Amendment of the Law.*

(a) But by the Statute 4 & 5 *Annæ, For the Amendment of the Law,* Grants of Reverſions or Remainders are good without Attornment; whereby it is enacted, That all Grants or Conveyances to be made by Fine, or otherwiſe, of any Manors or Rents, or of the Reverſions or Remainders of any Meſſuages or Lands, ſhall be good and effectual, to all Intents and Purpoſes, without any Attornment of the Tenants of any ſuch Manors, or of the Lands out of which ſuch Rent ſhall be iſſuing, or of the particular Tenants, upon whoſe particular Eſtates any ſuch Reverſions or Remainders ſhall and may be expectant or depending.

But Notice muſt be given to the Tenant.

Provided that no ſuch Tenant ſhall be prejudiced or damaged by Payment of any Rent to any ſuch Grantor or Conuſor, or by Breach of any Condition for Non-payment of Rent, before Notice ſhall be given to him of ſuch Grant by the Conuſee or Grantee.

By Fine, Recovery, and Deed to lead the Uſes.

Alſo by Fine (a) and Recovery, with a Deed to lead the Uſes. Vaugh. 50. See Bridg. Conv. 237, 238.

Where a Fine is levied of a Reverſion.

(a) If a Fine is levied of a Reverſion, the Conuſee preſently after the Conuſance ought to ſue out a *Quid juris Clamat* againſt the Leſſee. 5 *Co.* 39. *b.*

This is a Common Law Conveyance.

This is in Caſe of a Conveyance at Common Law; but where the Statute of Uſes brings the Poſſeſſion, the *Ceſty que Uſe* ſhall diſtrain without Attornment, and have the ſame Advantage as if the Conuſor's Poſſeſſion had been perfected by Attornment and Seiſin. *Vaugh.* 50.

Alſo by a Bargain and Sale for Money, inrolled if a Freehold:

Of a Term need not.

Alſo by Bargain and Sale inrolled (b) for Money, if it is a Freehold; (c) but if it is a Term, for Years (d), then a Bargain and Sale only for Money is ſufficient without (e) Inrollment. 2 Rep. 25. Heywood's Caſe. Vaugh. 51.

(b) *Vide* Title *Bargain and Sale.*

(c) And the Grantor ſeiſed.

A Difference between a Leaſe in Reverſion and a Leaſe of a Reverſion.

(d) But there is a Difference between a Leaſe in Reverſion and a Leaſe of the Reverſion; and if a Grant for Years of the Reverſion, for want of Attornment before the Statute, could not take Effect as a Grant of the Reverſion; yet it ſhall take Effect as a good Leaſe in Reverſion, and begin after the firſt Leaſe ended. 1 *Danv.* 611. Letter *E.*

So far as to accept of a Releaſe.

(e) So far as to accept of a Releaſe of the Inheritance; but not to bring Treſpaſs till actual Entry. *Carter* 66, 78.

Alſo by Covenant to ſtand ſeiſed to Uſes.

Alſo by Covenant to ſtand ſeiſed to Uſes. Liford's Caſe, 11 Rep. 46. 48. b. Poph. 82.

Alſo by Will in Writing.

Alſo by Will in Writing: But all theſe, except the firſt, did before the Statute paſs without Attornment.

Where a Deviſe of all the Reſt of Lands, includes a Reverſion.

A Perſon by Will deviſed a Manor to A. B. for ſix Years, and ſome other Lands to C. D. and his Heirs, and all the reſt of his Lands to his Brother, and the Heirs Male of his Body: And it was held, that theſe Words, the Reſt of his Lands, did not only extend to thoſe which were not deviſed before, but to the Reverſion in Fee of the Manor, after the Determination of the Eſtate for Years. Allen 28.

Until a Leſſee enters, the Leſſor hath no Reverſion.

Where a Man makes a Leaſe for Years, until the Leſſee enters the Leſſor hath no Reverſion, but ſtill continues his Poſſeſſion; and the Leſſee hath only a future Intereſt, until his actual Entry: But in caſe of

The Leſſee hath a future Intereſt till his Entry: But a Bargain and Sale for Money puts him in Poſſeſſion preſently.

**of a Bargain and Sale for Years, in Conſideration of Money, the Bargainee is put into Poſſeſſion by the Statute of Uſes.** Co. Litt. b. Carter 66.

He who hath a Reverſion in Fee may diſpoſe of it at his Pleaſure.

**He who hath a Reverſion in Fee veſted in him, may diſpoſe thereof at his** (a) **Pleaſure.** Noy 71, 72.

Iſſue in Tail levies a Fine in the Life of Tenant in Tail, it binds his Iſſue.

(a) And when Iſſue in Tail levies a Fine with Proclamations, in the Life of the Tenant in Tail, to another, and afterwards Tenant in Tail dies, this ſhall bind the Intail. 3 *Rep.* 51. *a.* and 1 *Rep. Archer*'s Caſe.

A Grant of a Reverſion during the Life of Tenant in Tail, is good, and why; otherwiſe of a Remainder.

A Grant of a Reverſion during the Life of Tenant in Tail is good; Becauſe he ſhall have the Services which Tenant in Tail ought to do, during the Life of Tenant in Tail; but ſuch a Grant in Remainder can never take Effect, but is void. 2 *Rep.* 51. *a.*

Tenant for Life, and he in Remainder in Tail may join in a Fine.

Tenant for Life and he in Remainder in Tail join in a Fine: this they lawfully may do, and bar both their Eſtates. 3 *Rep.* 60. *b.*

Tenant for Life ſurrenders to the Heir in Tail, he may ſuffer a Recovery.

**If Tenant for Life ſurrenders** (b) **to the Heir in Tail, the Heir in Tail may ſuffer a Recovery, and bar all Reverſions and Remainders expectant thereupon.** 5 Rep. 60. b.

Without the Tenant for Life there can be no Recovery.

(b) *Note*, Unleſs the Tenant for Life ſurrenders his Eſtate for Life, *Nil operatur* by the Recovery; becauſe the Freehold being in the Tenant for Life, the Heir in Tail can make no good Tenant to the *Præcipe* without his Surrender: But he may levy a Fine without the Tenant's Surrender, which will bar his Iſſue, and all claiming under him.

By the Grant of a Meſſuage a Reverſion will paſs, but not Lands by the Grant of a Reverſion.

**By the Grant of a Meſſuage or Lands, a Reverſion will paſs** (c); **but by Grant of a Reverſion, Lands will not paſs.** Litt. Rep. 18. 8 Rep. 36. 5 Rep. 124. 10 Rep. 107. b. Cro. Car. 400. pl. 8.

The beſt way is to put in the Reverſion.

(c) But the beſt Way is to put in theſe Words, (*the Reverſion and Reverſions, Remainder and Remainders.*)

There cannot be any Grant of a Reverſion of any Office, except only Offices of Inheritance.

A Reverſion of an Office cannot be granted by the Name of a Reverſion, for there is no Reverſion of an Office, unleſs it is an Office of Inheritance; yet it may well be granted in Reverſion, *Habendum* after the Death of the Grantee for Life. *Cro. Car.* 279. *pl.* 19. 1 *Jones* 310. 2 *Roll. Abr.* 153. *March* 38. 3 *Leon.* 31. *Salk.* 465.

*A Grant*

## *A Grant of a Reverſion is as followeth.*

A Grant of a Reverſion.

THIS Indenture made, &c. Between J. B. of the one Part, and J. N. of the other Part: * Whereas the ſaid J. B. by Indenture, bearing Date the firſt Day of A. laſt paſt †, for and in Conſideration of the Sum of, &c. in the ſame Indenture expreſſed (a), did grant, bargain and ſell to C. W. &c. All thoſe Parcels of Land in B. &c. And the Reverſion and Reverſions, Remainder and Remainders, Rents and Services, of all and every his Meſſuages, Lands, Tenements and Hereditaments before mentioned: To hold the ſaid Meſſuages, Lands, Tenements and Hereditaments, and other the Premiſſes, unto the ſaid C. W. his Executors, Adminiſtrators, and Aſſigns, from the Enſealing and Delivery of the ſaid recited Indenture, until the firſt Day of May * now next enſuing: Now this Indenture witneſſeth, that the ſaid J. B. for (b) and in Conſideration of a Marriage already had and ſolemnized between him the ſaid J. B. and M. his now Wife, and for a competent Jointure to be made and provided for the ſaid M. doth by theſe Preſents give and grant to the ſaid J. N. the Reverſion of all and every the ſaid Meſſuages, Lands, Tenements and Hereditaments, with their and every of their Appurtenances ſo granted, bargained and ſold in or by the ſaid recited Indenture, to the ſaid C. W. To have and to hold the ſaid Reverſion of the ſaid Meſſuages, Lands, Tenements and Hereditaments, unto the ſaid J. N. his Heirs and Aſſigns for ever, to the Uſes, Intents and Purpoſes herein after particularly following.

Where

* It may be granted after a Leaſe for Years or Life.

† There muſt be a Leaſe for Years firſt executed.

(a) It muſt be a Conſideration in Money that will raiſe an Uſe; but if it is by Demiſe, Grant, and to Farm let, it needs no ſuch Conſideration.

* This Grant of the Reverſion muſt be before the firſt of *May*.

(b) This may be without Conſideration.

Where it works as a Grant at the Common Law, there muſt be an actual Poſſeſſion of the Leſſee; where by the Statute of Uſes, there needs not.

Where it works as a Grant at the Common Law there muſt be firſt an actual Poſſeſſion of the Leſſee: But where the Statute of Uſes brings the Uſe into Poſſeſſion, there needs it not.

Grantees of Reverſions may take Advantage of Conditions by Statute.

By the Common Law, Grantees of Reverſions could not take Advantage of any Condition or Covenant broken by Leſſees of the ſame Land; but now by the Statute they ſhall have the like Advantage as the Leſſors and their Heirs, &c. Stat. 32 Hen. 8. cap. 34.

Actions brought by Reverſioners.

A Reverſioner may bring Action of the Caſe for any Injury to his Reverſion; but he cannot have Treſpaſs, which is founded on the Poſſeſſion. 3 Lev. 209, 233. 2 Roll. Abr. 55.

Charges by Tenants in Tail in Remainder.

No Leaſe, Rent-Charge, &c. made by Tenant in Tail in Remainder, ſhall charge the Poſſeſſion of the Reverſioner when it comes to him.

Reverſion how pleaded.

And how to plead a Reverſion in Fee. See 1 Lutw. 1174.

# Rents.

**What a Rent is.**

**A Rent is a Thing reſerved out of the Profits of the Land, and not due till the Tenant or Leſſee takes the** (a) **Profits.** Co. Litt. 141. b.

**How to declare for Rent.**

(a) For in all Actions of Debt for Rent, the Plaintiff muſt ſay in his Declaration, that *Virtute inde* the Defendant enter'd and was poſſeſs'd, otherwiſe it will not be good. See 1 *Vent.* 108. 10 *Salk.* 209. 1 *Vent.* 41. 1 *Mod.* 3. 1 *Sid.* 423.

**Three Sorts of Rents.**

**There are three Sorts of Rents.**

$$\textbf{Rent}\left\{\begin{array}{l}\textbf{Service,}\\ \textbf{Charge,}\\ \textbf{Seck.}\end{array}\right.$$

**Rent-Service by Tenure, what.**

**Diſtreſs of common Right.**

**1. Rent-Service is where the Tenant holds by Fealty and Rent, or by Homage, Fealty and Rent, and other Services, and certain Rent;** Co. Litt. 142. 1 Vent. 161. **and for this the Lord may diſtrein of common** (b) **Right.** Litt. ſect. 213. **but cannot bring Debt.**

**Tho' Rent-Service is tender'd on the Land at the Day, if the Lord not there, he may after diſtrein: But if he refuſe he cannot diſtrein without a Demand.**

(b) Although the Rent-Service is tender'd on the Land at the Day it is due, and the Lord is not there; the Lord may notwithſtanding ſuch Tender diſtrein: But if the Lord is there, and he refuſes the Rent, he cannot afterwards diſtrein without a Demand. And where a Penalty or Re-entry is joined to the Thing, you cannot enter without a Demand. *Hob.* 207. *Co. Litt.* 201. *b.* 202. *a.* 5 *Co.* 56. *Dyer* 51. *Hob.* 331. *Plow.* 70. 7 *Co.* 56. *Vaugh.* 32. *Vide* in Title *Tenant for Years.*

**Cannot be reſerved out of any incorporeal Inheritance: But Debt lies for it as a Sum in Groſs.**

A Rent cannot be reſerved by a common Perſon out of any incorporeal Inheritance: But if a Leaſe is made by Deed, reſerving a Rent, it may be good by way of Contract to have an Action of Debt for it, as a Sum in Groſs, tho' not as Rent: But ſuch Rent ſhall not paſs with the Grant of the Reverſion; for that it is not incident to it. Alſo if any Rent in ſuch Caſe is reſerved on a Leaſe for Life, it is utterly void.

For

For in that Caſe no Action of Debt doth lie. *Co. Litt.* 47. *a.* 142. *a. Cro. Jac.* 112. *pl.* 10. *Raym.* 194. *Hard.* 88. But by a Statute made 8 *Anne*, an Action of Debt lies for Rent, as well againſt Leſſee for Life as Leſſee for Years; which Statute ſee in Title *Conditions*.

Rent reſerved, what.

Where a Man gives Lands to another in Tail, or makes a Leaſe for Life or Years, rendring a Rent to the Donor or Leſſor, theſe are Rent-Services; for which there may be a Diſtreſs of common Right. Litt ſect. 214. Bro. Tit. Diſtreſs 5, 15. Co. Litt. 142. 8 H. 4. 15. Mo. 36. Cr. Eliz. 636.

Rent-ſervice may be apportioned;

But not a Rent-charge.

A Rent-ſervice (a), when the Tenant holds by Fealty and Rent without Deed, may be apportioned; ſo that if the Lord purchaſe Part out of which the Rent iſſues, the Rent ſhall be apportioned; (b) but econtra of a Rent-charge; becauſe that ariſes by Deed of Grant, and on Purchaſe of Part the whole is (c) extinct. Litt. ſect. 222.

Three Cauſes of Diſſeiſin of Rent-ſervice.

There are three Cauſes of Deſſeiſin of a Rent-ſervice, viz.

Reſcous,
Replevin, and
Incloſure. Litt. 237.

Rent-charge granted *de novo*.

2. Rent-charge is where a Man makes a Feoffment by Indenture, reſerving to himſelf and his Heirs (d) a Rent, and if the Rent be behind (e) that it ſhall be lawful for him and his Heirs to enter and diſtrein; this is a Rent-charge, becauſe the Lands are charged with ſuch Diſtreſs by the Writing only, and not of

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(a) Except it is an intire thing.

(b) *Per Hale* Chief Juſtice: If Leſſee redemiſe Part to the Leſſor, reſerving a Rent, there ſhall be no Apportionment; for the Parties have aſcertained it themſelves. But if on the Redemiſe there is no Rent reſerved, there ſhall be an Apportionment; but if Part is aſſign'd by the Leſſee to a Stranger, who aſſigns it to the Leſſor, and the Leſſee had reſerved no Rent, in that Caſe there ſhall be no Apportionment. 1 *Ventr.* 276, 277. 2 *Lev.* 143. *Pollex.* 141.

Grantee of a Rent-charge may releaſe Part.

(c) But a Grantee of a Rent-charge may releaſe Part to the Tenant of the Lands, and reſerve Part.

Muſt be reſerved to the Grantor.

(d) *Note*; A Reſervation of Rent muſt be always to him from whom the Eſtate in the Land moveth, and not to a Stranger. It cannot be to a Remainder-Man; but it may to a Reverſioner. *Cro. El.* 792. *pl.* 36.

If the Deed is, if the Rent be behind being demanded, he muſt demand it before he diſtrein.

(e) But if the Words of the Deed had been, that if the Rent be behind being demanded, here the Grantor common Right, as in the Caſe of a Rent-ſervice without Deed. Litt. ſect. 217.

tor muſt make a Demand before he diſtrein; but he need not to make it on any of the Days whereon it is due, as in caſe of a Demand for Re-entry; for he may make it at any time after, it being only to intitle him to his Duty. *Co. Litt.* 144. *a.*

For Non-payment may have an Action of Annuity or diſtrein.

In caſe of Non-payment the Grantee may bring his Writ of Annuity (a) or diſtrein, and if he brings his Writ of Annuity and recovers, he diſcharges the Land; ſo where he diſtrains and recovers upon an Avowry, he diſcharges the Perſon. Litt. ſect. 219. F. N. B. 152. 6 Co. 58. b. 1 Roll. Abr. 226. Poph. 87. Hob. 58. Dyer 344.

If he recovers by Annuity he diſcharges the Land.

Where the Land is only bound his Perſon is diſcharged.

(a) But where a Man binds his Lands only and not his Perſon, to pay a Rent-charge, this is a good Grant to charge the Land, but not the Perſon. *Litt. ſect.* 147.

No Annuity lies againſt the Heir of Grantor tho' Aſſets, unleſs he grant for him and his Heirs.

If a Rent-charge is granted to a Man and his Heirs, he ſhall not have a Writ of Annuity againſt the Heir of the Grantor, albeit he hath Aſſets, unleſs the Grant is for him and his Heirs. *Co. Litt.* 144. *b. Dyer* 344. *Hob.* 58. *Poph.* 87.

Annual Sum to be paid to a Stranger, is no Rent but a Sum in Groſs.

Where an Annual Sum is appointed to be paid to a Stranger, it is not a Rent, but a Sum in Groſs. 1 *Leon.* Caſe 362.

If no Clauſe of Diſtreſs, it is a Rent-ſeck; for which if he had Seiſin he may have an Aſſize.

But if there is no Clauſe of Diſtreſs in the Deed (b), then it is only a Rent-ſeck, for which if he hath had Seiſin, he muſt bring a Writ of Aſſiſe. Litt. ſect. 273.

(b) Or if the Rent is granted out of the Land only, and the Perſon not liable. *Litt. ſect.* 147.

A Grant of a Rent-charge for Life, *Proviſo* not to charge his Perſon: Yet on Grantee's Death his Executors may have Debt.

If a Man grant to another a Rent-charge out of Lands for Life, with a *Proviſo*, that the Grantee ſhall not charge the Perſon of the Grantor; yet if the Rent is behind, and the Grantee dieth, his Executors ſhall have an Action of Debt againſt the Grantor; becauſe they have no other Remedy. *Co. Litt.* 146. *b.* 6 *Co.* 41. *b.* 7 *Co.* 65. *b.*

## *The Form of a Grant of a Rent-charge.*

A Grant of a Rent-charge *de novo.*

This Indenture made, (&c.) between R. L. of the one Part, and E. B. of the other (c) Part, Witneſſeth, that the ſaid R. L. for and in Conſideration of Eight hundred Pounds of law-

(c) A Grant of a Rent at the Common Law is good, without any Conſideration; but where it is by Bargain and Sale inrolled, there muſt be a Conſideration of Money, or other valuable Conſideration:

on. *Vide* Title *Bargain and Sale.*

lawful Money of Great Britain, to him in Hand paid before the Sealing and Delivery hereof by the said E. B. whereof he doth hereby acknowledge the Receipt, hath granted (a), bargained and ſold, and by theſe Preſents doth grant, bargain and ſell, unto the ſaid E. B. and to her Heirs, one Annuity and yearly Rent-charge of forty Pounds, &c. to be yearly iſſuing out of the Manor of B. with the Appurtenances (b), To have and to hold the ſaid Annuity and yearly Rent-charge of forty Pounds yearly to the ſaid E. B. her Heirs and Aſſigns for ever, to be paid at Michaelmas and Lady-day yearly, by equal Portions. And if the ſaid Annuity or Rent-charge be behind and unpaid at any of the Days of Payment thereof, by the Space of twenty Days (c), then it ſhall and may be lawful to and for the ſaid E. B. her Heirs and Aſſigns, for all or any Part of the ſaid Rent, to enter in and upon any the Meſſuages, Lands, Tenements and Hereditaments, Parcel of and belonging to the ſaid Manor of B. and there diſtrein (d) ſo often as need ſhall require, for the ſaid Rent, or any Arrears thereof, and detain and keep the Diſtreſs or Diſtreſſes ſo taken, until the ſaid Rent, and all Arrears thereof, be fully paid.

(a) Formerly there ought to be an Attornment, or elſe the Bargain and Sale to be inrolled; but now Attornments are gone by 4 & 5 *Annæ.* The Form of an Attornment, ſee Title *Grant.*

A Grant may be of a Rent *in eſſe.*

(b) This is a Grant *de novo*, for the Rent is created by this Grant: But a Grant may as well be of a Rent *in eſſe*, *viz.* a Rent whereof a Man is ſeiſed at the time of the Grant. *Vide* for a Grant of a Rent *de novo*, *Carter* 52.

(c) Or it may be without the Words, *by the ſpace of twenty Days.*

Diſtreſs for Rent muſt be in the Day: For Damage Feaſant Day or Night.

(d) A Diſtreſs for Rent muſt be in the Day-time; but a Diſtreſs for Damage Feaſant may be in the Night; becauſe otherwiſe the Cattle may be gone before he can take them. *Co. Litt.* 142. *a.* 7 *Co.* 7. *a.* 9 *Co.* 66. *a.* *Latch* 211. 4 *Leon.* 218.

Four Cauſes of Diſſeiſin of Rent-charge.

There are four Cauſes of Diſſeiſin of a Rent-charge.

Reſcous,
Replevin,
Incloſure, and
Denial. Litt. ſect. 238.

Denial muſt be upon a Demand made. *Co. Litt.* 161. *b.*

A Rent-ſeck, what.

3. A Rent-ſeck is where the Lord grants away his Rent, and the Tenant attorns to the Grantee; this is a Rent-ſeck.

Being ſeiſed of a Rent-ſeck unpaid, muſt demand it on the Land;

And if the Tenant deny (or is not ready, or not there) to pay it, it is a Diſſeiſin, and he may have a Writ of Aſſize to recover it.

The Demand for a Rent-ſeck may be made at the Houſe, or on the Land; but on a Condition for a Re-entry it muſt be at the Houſe.

It may be demanded after it is due.

Where a Man hath Seiſin of a Rent-ſeck, and it is not paid, he muſt go to the Land (a), and there demand (b) it with the Arrears; and if the Tenant deny to pay it, or is not ready or there to pay it, this is a Diſſeiſin, and he may bring his Writ of Aſſize for it. Co. Litt. 153. b.

Tho' Attornment is made, yet if no Seiſin had, there is no Remedy for it by Law.

And though there is an Attornment, yet if there is no Seiſin of the Rent, the Grantee is without (c) Remedy; but Payment of a Penny in the Name of Seiſin of the Rent is a good Seiſin to maintain an Aſſize, tho' no Rent is due then. Litt. ſect. 235. 6 Co. 58. b.

Diſſeiſins of a Rent-ſeck.

There are two Cauſes of Diſſeiſin of a Rent-ſeck, viz.

Denial, and
Incloſure. Litt. ſect. 236.

By Grant of the Reverſion the Rent paſſeth; but by Grant of the Rent the Reverſion will not.

Where Lands are given in Tail, rendring a Rent; if the Donor grants the Reverſion, and the Tenant attorns (d), the Rent paſſes; (e) but if he grants the Rent, the Reverſion will not paſs. Litt. ſect. 229. But now by 4 & 5 Annæ there needs no Attornment.

A Rent may be created by Will in Writing.

A Rent may be created by Will in Writing (f). Carter 52, 53.

Rent on Leaſes at Will, and how recovered: Due only by the Occupation.

And to the three Sorts of Rents before-mentioned, may be added a Rent reſerved upon a Leaſe at Will: * In Action of Debt for which, the Plaintiff muſt ſhew that the Defendant entered and was poſſeſſed;

(a) It muſt be upon the Ground; and if there is a Houſe and Land, it may be on either: But upon a Condition of Re-entry, the Demand muſt be at the Houſe. *Co. Lit.* 153. *a.*

(b) It is not neceſſary to make a Demand at the Time it becomes due, but any Time afterwards is ſufficient; and it is not like a Demand of Rent upon a Condition. *Co. Litt.* 153. *b. Hob.* 207.

(c) At Law; but Equity will relieve him.

(d) Or elſe if he grant it by Bargain and Sale inrolled, in Conſideration of Money, without Attornment.

(e) Becauſe ſuch Rent is incident to the Reverſion, and paſſes by the Grant of the Reverſion. *Litt. ſect.* 299.

(f) There needs no Attornment to this Rent, becauſe the Deviſee is in by the Law.

* Alſo called a Rent diſtrainable of Common Right.

becauſe the Rent is due only in reſpect of the Occupation: But on a Leaſe for Years, the Rent is due by the Leaſe or Contract, and if the Leſſee never enters, he muſt pay the Rent. Co. Litt. 141. 1 Salk. 209. 1 Mod. 3. 1 Vent. 108, 41. 1 Sid. 423.

A Rent may be reſerved by a Bargain and Sale inrolled.

If a Man bargains and ſells his Lands in Fee by Deed indented and inrolled according to the Statute, a Rent may be reſerved thereupon; for tho' a Uſe had only paſſed at the Common Law, yet now by the Statute of Uſes, the Uſe and Poſſeſſion paſs together. Co. Litt. 144. Cro. El. 595. pl. 39. 2 Roll. 448.

It may ariſe out of the Eſtate of *Ceſtuy que Uſe*, upon a Recovery.

A Rent may ariſe out of the Eſtate of Ceſtuy que uſe upon a Recovery; becauſe by the Intention of the Parties, the Ceſtuy que uſe was to pay the Rent. Vaugh. 52. 2 Rep. 69. b. and 72. b. Where A. was ſeiſed in Fee, and covenanted to ſuffer a Recovery to the Uſe of B. and his Heirs, rendring to A. a Rent of forty Pounds per Annum, and held that the Rent ſhould ariſe by Virtue of the Clauſe in the Statute of Uſes. 27 H. 8. cap. 10. ſect. 4, 5.

A Recovery will bar the Remainders of a Rent intailed; ſo a Fine will bar the Iſſue.

An Intail of Rent, where there are Remainders, may be barred by a Recovery: Alſo a Fine may be levied of a Rent, and it ſhall bar the Conuſor's own Iſſue. Vide Vaugh. 36.

A Rent will paſs by a Deed of Uſes; as in Conſideration of natural Affection, and of five Pounds yearly, he aſſigns to his Son and his Heirs a Rent to the Uſe of his Son.

A Rent will paſs by a Deed of Uſes; as where a Man ſeiſed in Fee of a Rent, in Conſideration of natural Affection, and of five Pounds yearly to be paid to him by his Son during his Life, did grant, aſſign and ſet over (a) the ſaid Rent to his ſaid Son and his Heirs, to the Uſe of his Son and his Heirs: And it was agreed by the whole Court, that this Deed being to the Son, with an expreſs Conſideration of natural Affection, (though the Money was alſo Part of the Conſideration expreſt) that it would work as a Covenant to ſtand ſeiſed. 2 Vent. 266. Vide Comb. 190, 128, 129.

(a) *Note* Theſe Words.

It will work as a Covenant to ſtand ſeiſed.

A Rent may be granted to a Uſe; as *A. B.* grants a Rent to *C. D. ad opus E. F.* and covenants to pay it to *C. D. ad opus E. F.*

Alſo a Rent may be granted to a Uſe; as where A. B. grants a Rent to C. D. and his Heirs, ad opus & uſum E. F. and the Grantor covenanted to pay the Rent to C. D. ad opus & uſum E. F. and for Default of Payment an Action was brought.

27 H. 8. *cap.* 10. *ſect.* 4, 5.

And it was urged, that this Action would not lie; for that this Rent is executed by the Statute of Uſes, and therefore E. F. ought to have diſtrained for the Rent: For that E. F. having a Remedy, C. D. the Plaintiff, out of whom the Rent is transferred by the

Statute, cannot bring this Action: Hereupon aroſe two Queſtions.

1. Whether this Remedy by Action of Covenant be tranſferred to E. F. by the Statute, or not?

2. If not, Whether the Covenant is diſcharged, or not?

The Statute of Uſes transfers with the Eſtate all Remedies incident thereto, not collateral ones.

Curia: When the Statute transfers an Eſtate, it transfers with it ſuch Remedies as by Law are incident to the Eſtate, not collateral ones. And there is a Clauſe in the Statute, which gives the Ceſtuy que uſe all ſuch Remedies as he would have had, if the Rent had been actually granted him; and that has Place, where one is ſeiſed of Lands in Truſt that another ſhall have the Rent, (a) not where a Rent is granted to one to the Uſe of another.

Therefore the Covenant is not diſcharged.

They agreed, That the Covenant was not diſcharged, and gave Judgment for the Plaintiff. 1 Mod. Rep. 223.

If a Man ſeiſed in Fee of a Rent grant it over, he is without Remedy for the Arrears.

If a Man is ſeiſed of a Rent-ſervice, or Rent-charge in Fee, and grant it over to another and his Heirs by Deed, and the Tenant attorns, ſuch Grantor is without Remedy for the Rent arrear before his Grant; for diſtrain he cannot, and he hath no other Remedy, becauſe all Privity between him and the Tenant is deſtroyed by the Attornment to the Grantee. 4 Rep. 49. Co. Litt. 162. b. Vide Dixon and Harriſon in Vaugh. 1 Roll. Abr. 672.

Leaſe for Life, Remainder for Life Remainder in Fee; Tenant for Life pays not the Rent: The Lord and Tenant for Life die, the Executors cannot diſtrain on him in Remainder.

A Man makes a Leaſe for Life, Remainder for Life, Remainder in Fee. If the Tenant for Life pays not the Rent due to the Lord, the Lord dieth, and the Tenant for Life dieth, the Executors cannot diſtrain upon him in Remainder; becauſe he claims not by or from the Tenant for Life. Co. Litt. 162. b.

Tenant for Life leaſes for Years under Rent, if he dies before the Day of Payment, his Tenant is diſcharged of the Rent.

How this is guarded againſt.

Where a Tenant for Life lets a Leaſe for Years, if he ſhall ſo long live, under a certain Rent, and the Tenant for Life dieth before a Quarter-Day, or Day of Payment; the Tenant is diſcharged of the Rent for that Quarter, by the Act of God. But this may be guarded againſt by dividing the Rent, and making it payable weekly, &c. (b) tho' it be not uſually received otherwiſe than quarterly. 10 Co. Rep. 127. Comb. 255.

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(a) Vaugh. 50. & Carter 197.

(b) Or by Covenant for the Tenant to pay the Executors of the Leſſor, for ſo much of the Profits as ſhall be received in Proportion to the whole Rent, till his Death. 10 *Rep.* 129.

But by the Stat. 11 *Geo.* 2. the Executor or Administrator of ſuch Tenant for Life may recover the whole, if he die on the Day of Payment, or if before ſuch Day, then a Proportion.

Now by the Stat. 11 Geo. 2. Where any Tenant for Life ſhall happen to die before or on the Day on which any Rent was reſerved or made payable, upon any Demiſe or Leaſe of any Lands, Tenements or Hereditaments, which determined on the Death of ſuch Tenant for Life, that the Executors or Adminiſtrators of ſuch Tenant for Life ſhall and may, in an Action on the Caſe, recover of and from ſuch Under-tenant or Under-tenants of ſuch Lands, Tenements or Hereditaments, if ſuch Tenant for Life die on the Day on which the ſame was made payable, the Whole, or if before ſuch Day, then a Proportion of ſuch Rent, according to the Time ſuch Tenant for Life lived of the laſt Year or Quarter of a Year, or other Time in which the ſaid Rent was growing due as aforeſaid, making all juſt Allowances or a proportionable Part thereof reſpectively.

A Rent reſerved on Leaſe for Years during the Term, by Grant of the Reverſion, the Rent is transferred.

If a Rent is reſerved upon a Leaſe for Years of Lands in Fee-ſimple (a) during the Term to the Leſſor, his* Executors, Adminiſtrators and Aſſigns, and not to his Heirs; yet by the Grant of the Reverſion, the Rent is well transferred to the Grantee. 2 Saund. 367, 368, 369, 370. 1 Ventr. 148. Raym. 213. 2 Keb. 798, 819. 2 Lev. 13. See Sury and Cole in Latch 44, 49, 255, 264.

Baron and Feme poſſeſt of a Term for Years; the Baron only aſſigns the Term, rendring Rent to himſelf and Feme: The Baron dies, who ſhall have the Rent.

In Caſe of Baron and Feme, the Baron, being poſſeſſed of a Term for Years, by Indenture, to which his Feme was a Party, (but ſhe did not ſeal) aſſigns over his Term, rendring Rent to the ſaid Baron and Feme, and the Survivor of them, and the Baron dies; neither the Feme (b) nor the Adminiſtrator (c) of the Baron in this Caſe can have the Rent. Cro. Car. 288. pl. 36.

Whereas Debt did not lie at the Common Law for Rent due upon a Leaſe for Life; now by Statute it is enacted, That any Perſon having Rent arrear upon any Leaſe for Life, may bring an Action of Debt for ſuch Arrears in the ſame Manner as if reſerved upon a Leaſe for Years. 8 Annæ Reginæ.

The new Acts 4 Geo. 2. and 11 Geo. 2. for the more eaſy Recovery of Rents, &c. and making Rents-ſeck recoverable as Rents reſerved upon Leaſe, vide Tenant for Years.

Revo-

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(a) *Note*; During the Term.

* It ſhould have been Heirs.

(b) The Feme cannot have it, becauſe no Intereſt paſſes from her.

(c) The Adminiſtrator cannot, becauſe the expreſs Reſervation is to the Survivor, which is the Feme.

# Revocation.

What a Revocation is.

A Revocation is a Deſtroying and Making void of ſome Deed or Will which had Exiſtence, until the Act of Revocation which made it void.

He muſt be of as good diſpoſing Memory to revoke a Will as to make it.

A Man ought to be of as good diſpoſing Memory when he revokes his Will, or his Deed, as when he makes it. Cro. Jac. 497. pl. 3.

May limit new Uſes where the expreſs Power was only to revoke.

The Limitation of new Uſes is good, where the expreſs Power in the firſt Deed was only to revoke. 1 Chanc. Rep. 242.

If Power to revoke an Eſtate-tail, he cannot create a Fee.

Where a Man hath Power to revoke an Eſtate-tail, he cannot out of it create a Fee. 3 Lev. 213, 214.

Things to be obſerved to limit Uſes.

As to the Revocation of Uſes theſe ſix Things are to be obſerved.

1. That Revoker is ſeiſed again without Entry or Claim. But not to bring Treſpaſs without Entry.

I. That the Revoker is ſeiſed again, without Entry or (a) Claim. 1 Rep. 173. b. But not ſo as to bring Treſpaſs, without Entry. Carter 78.

(a) For that he being Tenant in Poſſeſſion of the Land, cannot enter upon himſelf.

2. May revoke Part at one Time, and Part at another.

II. That he may revoke Part (b) at one Time, and Part at another.

(b) But he can revoke one and the ſame Part but once, without a new Power of Revocation to the Uſes newly limited. 1 *Rep.* 173. *b.* 3 *Salk.* 316.

Can revoke one Part but once, without a new Power of Revocation.

3. By Feoffment in Fee or Fine of any Part, the Power is extinct *pro tanto.*

III. That if he makes a Feoffment in Fee, or levy a Fine, &c. of any Part, this extinguiſhes the Power pro tanto; (c) But if of the whole, all is extinct.

(c) Where Uſes are to be revoked by Deed indented and inrolled, and a Fine is levied before Inrolment, this hath extinguiſhed the Power of Revocation: So a Feoffment or Releaſe to any one who hath a Freehold in Poſſeſſion, Reverſion or Remainder, is a Revocation. For his Power is not meerly collateral to the Land, but ſavours of the Intereſt of the Land. *Ibid.*

Uſes to be revoked by Indenture inrolled: A Fine levied before Inrollment extinguiſhes the Power: So a Feoffment, or Releaſe to the Freeholder in Poſſeſſion.

4. If he who has Power has no preſent Intereſt, nor ſhall have by Ceaſer, a Fine or Feoffment extinguiſhes not his Power.

IV. That if he who hath ſuch Power hath no preſent Intereſt in the Land, nor ſhall have any Thing by the Ceaſer of the Eſtate, a Feoffment or Fine of the Land, is no Extinguiſhment of his Power; becauſe it is meerly collateral to the Land.

5. By the Conveyance which revokes old Uſes, which ceaſe without Entry, new Uſes may be created.

V. That by the ſame Conveyance, the old Uſes are revoked, new may be created, where the former ceaſe ipſo facto (a), without Entry or Claim.

But not ſo as to bring Treſpaſs.

(a) Becauſe the ancient Uſes ceaſe *ipſo facto*, without Entry or Claim*; and the Law ſhall adjudge Priority of Operation of the ſame Deed, although it be ſealed and delivered at one and the ſame Inſtant: And therefore in Conſtruction of Law, it ſhall be firſt a Revocation, and then a Limitation of new Uſes. 1 *Rep*. 174. *a. b. Vaugh*. 42.

* But not ſo as to bring Treſpaſs. *Carter* 78.

A Fine or Feoffment may extinguiſh a future Power.

A Fine or Feoffment may extinguiſh a future Power of Revocation. 1 *Rep*. 112. *b*. See *Salk*. 3 [illegible].

He who hath a preſent or future Power of Revocation may releaſe it.

And a Power of Revocation as well preſent as future may be releaſed by him who hath ſuch Power, to any one who hath an Eſtate of Freehold in the Land, in Poſſeſſion, Reverſion, or Remainder. 1 *Rep*. 113. *b*.

A Will may be revoked by Feoffment, Bargain and Sale, &c.

By a Bargain and Sale, *&c.* or Feoffment of Lands given by Will to Uſes, the Will is revoked; becauſe a Will cannot take Effect till after the Teſtator's Death. *Dyer* 74. 3 *Lev*. 108. Where Revocation of a Will ſhall be preſumed, ſee 2 *Salk*. 592.

6. Revocations are favourably interpreted.

VI. That theſe Revocations are favourably interpreted; becauſe many Mens Inheritances depend thereon. Co. Litt. 237. a. Skin. 72. Fitz-Gib. 214.

*A*. levies a Fine to the Uſe of B. in Fee, for Payment of his Debts, reſerving a Power to revoke by Indenture; and after covenants to levy (and levies) a Fine to other Uſes, is a good Revocation.

A. levies a Fine to the Uſe of B. and his Heirs for the Payment of his Debts, reſerving a Power to revoke by Deed indented, ſubſcribed with his own Hand, and ſealed with his Seal; afterwards by a Writing ſubſcribed and ſealed, he covenants to levy a Fine to other Uſes, and after that a Fine is levied accordingly.

It was inſiſted by Jones Attorney General, That this is no Revocation, for that in Revocations the Subſtance and Circumſtances are to be conſidered, and there muſt be a Defect in neither: And this Deed, tho' it hath the Circumſtances, it hath not the Subſtance: Becauſe it doth not revoke in præſenti, but refers to a future Act, (viz.) the Fine. And here the Deed it ſelf is not ſufficient to revoke without the Fine, which is no Part of the Authority.

Hale. Neither the Deed nor Fine by it ſelf can revoke; but quæ non valent ſingula, juncta proſunt. And the Caſe of Kibbet and Lee, in Hob. 312. treads cloſely upon this Caſe, where the Power was to revoke by Writing under his Hand and Seal, delivered in the Preſence of three or more credible Witneſſes. It was reſolved that a Deviſe of the Land with all the Circumſtances limited in the Power, ſhould be a good Revocation: Whereas a Will which could have no Effect until the Death of the Party, did ſtrongly imply that the Meaning was to do it by Deed.

If the Fine had been levied before the Deed executed, it had extinguiſhed the Power.

In the Caſe at the Bar, if the Fine had been levied firſt, and then the Deed of Uſes made afterwards, the Power had been extinguiſhed by the Fine (a): And ſo no Revocation (of that which had no Being) could have been of the Deed. See Skin. 35, 52, 71. Comb. 11.

(a) *A.* ſeiſed in Fee makes a Conveyance to the Uſe of himſelf for Life, with Remainder over, and a Power of Revocation by Writing under his Hand and Seal.

Conveyance to the Uſe of himſelf for Life, with Remainder over, and Power to revoke.

And after levied a Fine, and then by Deed declared the new Uſes, and revoked the former.

He having afterwards a Purpoſe to revoke, levied a Fine, and by Deed bearing Date ten Days after declared the Uſes of the Fine, (which Deed had the Circumſtances required by the Power) wherein he expreſs'd, he revoked the former Uſes, and proceeded to the Limitation of new Uſes by that Deed.

The Fine being levied before the Deed, extinguiſhed his Power.

The Queſtion was, Whether this Fine had extinguiſhed his Power? Or whether the Fine and Deed ſhould be taken to be but one Conveyance; and ſo an Execution of his Power, and a good Limitation of the new Uſes?

And by three Judges againſt *Withers* adjudged, That it was an Extinguiſhment of his Power, and that the Deed came too late. 1 *Vent.* 368, 371. 2 *Show.* 368. *Vide Skin.* 35, 52, 71. *Comb.* 11. But ſee in the Earl of *Leiceſter's* Caſe, That

The Deed and Fine taken together were reſolved to be a good Execution of the Power, and made a Revocation. 1 Ventr. 278, 279, 280, &c. 2 Lev. 149. Raym. 239. 2 Keb. 366, 489. 3 Salk. 316. 4 Mod. 261. 2 Salk. 677. Show. Parl. Ca. 140.

A Man by Indenture declares the Uſes of a Fine, with a Clauſe to revoke and limit new Uſes; he may at his Pleaſure revoke and declare new Uſes.

If an Indenture declares the Uſes of a Fine, and ſays further, and that it ſhall be lawful to revoke, and limit new Uſes: The Party may by Deed revoke and limit new Uſes at his Pleaſure. But if upon ſuch Indenture, whereby he declares the Uſes, he reſerves a Power of Revocation, and doth not alſo reſerve a Power to limit new Uſes; he can only revoke, and not limit new Uſes, by Virtue of the Eſtate raiſed by the firſt Fine. 1 Sid. 343, 344. But ſee 1 Chan. Rep. 242.

But if he only reſerves a Power to revoke and not limit new Uſes, he can only revoke.

The Uncle covenants with his Nephew for Advancement of his Blood, to ſtand ſeiſed to the Uſe of himſelf for Life, and the Nephew in Tail.

A Man, by Indenture between him and his Nephew, covenants for Advancement of his Blood, to ſtand ſeiſed to the Uſe of himſelf for Life, and afterwards to the Uſe of his Nephew in Tail.

Proviſo the Uſes to be void, on delivering a Ring by himſelf, or other Perſon.

Proviſo, That if the Uncle by himſelf, or by any (a) Perſon during his Life, ſhould deliver or offer to the Nephew a Gold Ring to the Intent to make void the Uſes, that then all the Uſes ſhall be void.

And after was attainted of Treaſon.

He afterwards committed Treaſon, and was attainted; and the Queen made a Letter of Attorney to two Perſons to tender this Ring, which was done accordingly, and the Ring refuſed.

And the Queen by Letter of Attorney tenders the Ring to the Nephew.

This is a ſufficient Tender, and determines the Uſes, as reſolved by the Judges.

And it was reſolved, that the Tender here was ſufficient, and that preſently on the Tender, the Uſes were determined, and void in Law; but the Nephew was not ſatisfied with this Opinion, he intending to bring a Writ of Error.

Judgment affirmed by Act of Parliament.

But the Judgment was affirmed by Act of Parliament. 7 Rep. 11. a. 14. b. 15. b.

(a) A Diverſity was taken between Conditions, which are perſonal, and cannot be performed by any other, and Conditions which are not ſo inſeparably annex'd to the Perſon, but that they may be performed by ſome others.

As where a Power is limited, that if he ſhall be minded to revoke the Uſes, then if he do ſignify his Mind in Writing under his Hand and Seal; here no Body can do it but himſelf *propria manu.* *7 Rep.* 13. *b.*

A Termor, in Conſideration of natural Affection and raiſing Portions, aſſigns in Truſt for himſelf for Life, and after to raiſe five hundred Pounds;

*A.* poſſeſſed of a Leaſe for Years, in Conſideration of natural Affection, and for raiſing of Portions, *&c.* aſſigns to *A.* and *B.* in Truſt for himſelf for Life, and after to the Truſtees for raiſing 500 *l.* for his Children.

With Proviſo during Life to alter and create new Uſes.

In which Deed there was a Proviſo, That at any Time during his Life, he may in the Preſence of two Witneſſes alter the Uſes, and create others.

And after was attainted of Treaſon.

He was afterwards attainted of Treaſon, and a ſpecial Act of Parliament was made for the Forfeiture of all Conditions, Rights, Titles, *&c.*

Adjudged this Truſt was not forfeited.

The Truſtees had no Notice of this Deed till after the Death of *A.* and one of them would not accept the Truſt, but the other did and enter'd: It was held that this Truſt was not forfeited; This was one *Simon Maine*'s Caſe, 14 *Car.* 2. *in B. R.* upon a ſpecial Verdict.

A Will without an expreſs Revocation, adjudged a good Revocation.

A Power was reſerved to D. to revoke a Deed by Writing, ſubſcribed and ſealed by him in the Preſence of two or more Witneſſes. D. makes his Will in Writing, without making any expreſs Revocation; and adjudged a good Revocation, and the Will a good Execution of the Power. Raym. 295, 301. See Kibbet and Lec, Hob. 312. 2 Williams 415.

Powers of Revocation are good by the Statute of Uſes, by *Proviſo*, &c. in Covenant to ſtand ſeiſed.

In voluntary Deeds and Conveyances there are frequently Proviſo's containing Power of Revocation, which being coupled with an Uſe, and tending to paſs by raiſing of Uſes, according to the Statute 27 Hen. 8. are allowed to be good; As where a Man ſeiſed of an Eſtate in Fee, covenants to ſtand ſeiſed thereof to the Uſe of himſelf for Life, and after to the Uſe of his Son in Tail, Remainder over, &c. with Proviſo *, that he may revoke any of the ſaid Uſes: Now if afterwards he revokes them, he is ſeiſed again in Fee, without Entry or Claim. 1 Co. Inſt. 237.

* In Caſe of a Conveyance at Common Law, ſuch *Proviſo* is repugnant and void.

But void as to Purchaſers.

But voluntary Eſtates made with Power of Revocation, as to Purchaſers are held in equal Degree with Conveyances made by Fraud. Stat. 27 Eliz. c. 4. 3 Rep. 82.

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# Surrender.

A Surrender, *quid.*

A Surrender* is the Yielding up of an Eſtate for Life, or Years, to him who hath an immediate Eſtate in Reverſion or Remainder, wherein the Eſtate for Life or Years may drown by mutual Agreement between (a) the Parties. Co. Litt. 337. b. 2 Ventr. 206. 3 Mod. 298. Perk. ſect. 584.

If Leſſee for twenty Years takes a Leaſe for ten Years, it is a Surrender of the firſt Leaſe.

(a) Leſſee for twenty Years takes a new Leaſe for ten Years; the Term for twenty Years is determined or ſurrendered. *Per Anderſon. Cro. El.* 522. *pl.* 49. *Poph.* 30. *Co. Litt.* 218. *b. Cr. Eliz.* 302. 2 *Vent.* 326.

But if Leſſee for twenty-one Years takes a Leaſe for forty, to commence at the Death of *J. S.* it is not a Surrender of the firſt Leaſe till *J. S.* die.

Leſſee for twenty-one Years takes a Leaſe of the ſame Land for forty Years, to commence after the Death of *J. S.* this is not any preſent Surrender of the firſt Term; but if *J. S.* dies within the Term, it is: For it may be that *J. S.* may ſurvive the firſt Term. 4 *Leon.* Caſe 83.

A Surrender is by Deed or by Law.

A Surrender is of two Sorts, viz. A Surrender by Deed (b), and a Surrender in (c) Law. Co. Litt. 383. a.

Parol Surrenders are void.

(b) All Parol Surrenders are void by the Statute of Frauds and Perjuries, 29 *Car.* 2. *cap.* 3. *ſect.* 3.

A Right cannot be ſurrendered.

(c) A Right cannot be ſurrender'd, but it muſt be ſome Eſtate in Poſſeſſion. *Co. Litt.* 338. *a.*

Things required to make a good Surrender of Lands by Deed.

Eſtate of Surrenderor and Surrenderee.

And to the Making of a good Surrender by Deed, the Surrenderor muſt have an Eſtate in Poſſeſſion of the Land, &c. ſurrendered; and the Surrender is to be made to him that hath the next Eſtate in Remainder or Reverſion, without any Eſtate coming between; the Surrenderee muſt have a higher or greater Eſtate, in his own Right, in the Thing ſurrendered, than the Surrenderor hath (d); And there is to be Privity of Eſtate between the Surrenderor and Surrenderee, &c. Co. Litt. 338. Perk. 584, 588.

(d) That the Eſtate of the Surrenderor may be drown'd therein.

* It is a particular Sort of Conveyance that works by the Common Law. 2 *Ventr.* 201.

## A Deed of Surrender.

The Form of a Deed of Surrender.

KNow all Men by theſe Preſents, that I A. B. of, &c. have granted and ſurrendered, (a) and by theſe Preſents do grant and ſurrender to C. D. his Heirs and Aſſigns, the Manor of, &c. and the Reverſion and Reverſions, Remainder and Remainders of the ſame; To have and to hold the ſame unto the ſaid C. D. and his Heirs for ever. See 2 Ventr. 199.

Where a Surrender in Law is of greater Force than a Surrender in Deed.

A Surrender in Law is in ſome Caſes of greater Force than a Surrender in Deed: As if a Man makes a Leaſe for Years to begin at Michaelmas next, this future Intereſt cannot be ſurrendered by Deed, becauſe there is no Reverſion wherein it may drown; (b) but by a Surrender in Law it may be drowned: As if the Leſſee before Michaelmas takes a new Leaſe for Years, either to begin preſently, or at Michaelmas, this is a Surrender in Law of the former Leaſe; (c) for Fortior & potentior eſt diſpoſitio legis quam hominis. Co. Litt. 338. a. Plow. Com. 170. b. 5 Rep. 11. Ive and

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Muſt be Agreement between Surrenderor and Surrenderee.

(a) There muſt be an Agreement of the Surrenderor and Surrenderee; otherwiſe *Nil operatur.* 2 *Ventr.* 206.

But it hath been a great Doubt, where a Deed of Surrender is made to him in Reverſion in his Abſence *, and without his Knowledge, whether an Agreement is not intended, and that the Law ſhall ſuppoſe an Aſſent, till his Diſagreement appears: It was the Opinion of *Ventris* that it ſhould; and the Houſe of Lords, upon a Writ of Error, gave Judgment accordingly. 2 *Vent.* 206. 3 *Lev.* 284. 1 *Show.* 296. 3 *Mod.* 296, 301. *Parl. Caſes* 150, 151. 2 *Salk.* 618. *Co. Litt.* 266. *b.* But *Pollexfen*, Chief Juſtice, *Powel* and *Rokeby*, Juſtices, were of Opinion, That it was no Surrender till the Surrenderee had Notice of the Deed of Surrender, and agreed to it.

* If he were preſent he muſt either agree or diſagree. 2 *Vent.* 206.

(b) For until Entry the Leſſee hath no Eſtate, but only *Intereſſe Termini*; and until the Term is veſted in him (which muſt be by Entry) there can be no Reverſion; and no Man is capable of accepting of a Surrender, but he who hath a Reverſion in him.

If Leſſee for twenty Years take a Leaſe for ten Years, to begin at *Michaelmas*, the firſt Leaſe is ſurrendered.

(c) If Leſſee for twenty Years take a Leaſe for ten Years, to begin at *Michaelmas*, Sam's Caſe, and Cro. Eliz. 522. pl. 49. the ſame Caſe. Litt. Rep. 268, 269, 270, &c. Poph. 9. 2 Roll. Abr. 496.

*mas*, the Term for twenty Years is ſurrendered preſently, and the Leſſor may enter preſently; for by the Leſſee's Acceptance, the Leſſor hath Power to make a new Leaſe during the former. *Cro. El.* 522. *pl.* 49. 605. *pl.* 3. 5 *Co.* 11. *b.* 2 *Roll.* 496. *Litt. Rep.* 273. *Poph.* 9.

A. leaſes to B. for ten Years, and after to another for five, and after to B. for ſeven Years, it is a Surrender of the firſt Leaſe.

Where *A.* makes a Leaſe for ten Years to *B.* and *A.* afterwards leaſes to another for five Years, and afterwards leaſes to *B.* the ſame for ſeven Years; this is a Surrender of the firſt Term of ten Years. *Litt. Rep.* 273.

If Leſſor mortgage to his Leſſee his Reverſion, and pays not the Money at the Day, the Leaſe for Years is not ſurrendered, but extinct.

A Leſſor mortgages his Reverſion in Fee to his Leſſee for Years, and doth not pay the Money at the Day, the Leaſe for Years is not hereby ſurrendered, but extinct. 3 Leon. Caſe 17.

Acceptance of a voidable Leaſe is a Surrender of a good Leaſe.

If he in Reverſion (a) makes a Leaſe for Years, or grants a Rent-charge, and the Leſſee for Life ſurrenders, the Leaſe or Rent ſhall (b) commence preſently. Co. Lit. 338. b.

Or Acceptance of a void Leaſe.

So it is upon the Acceptance of a void Leaſe. *Cro. El.* 873, 874. *pl.* 12. *Mo.* 636. 1 *Keb.* 285.

Acceptance of a new Leaſe of Part is a Surrender of that Part only.

If Leſſee for Years of Land accept a new Leaſe of Part of the Land, this is a Surrender only for that Part. 2 Roll. Abr. 498.

Tenant at Will cannot ſurrender.

Tenant at Will can no more ſurrender than he can grant. Cro. El. 156. pl. 39.

Leſſee for Years may Surrender to the Reverſioner for Years.

It was moved in Arreſt of Judgment, that where two Perſons are Termors, the one in Poſſeſſion, and the other in Reverſion, they cannot ſurrender the one to the other; for that one Term cannot drown in the (c) other.

Leſſee for twelve Years cannot ſurrender to Leſſee for ten Years.

Curia: He who hath an Eſtate for ten Years may ſurrender to him who hath an Eſtate for twelve Years (d), and the Eſtate will be drowned; and per Popham, There is no Doubt but that a Surrender to him who hath a greater Eſtate for Years is good. Cr. El. 302. pl. 101. See 527. pl.

(a) After a Leaſe for Life.

(b) The Acceptance of a voidable Leaſe will be a Surrender of a good and ſure one. *Vide* 2 *Roll. Abr.* 497. *Noy* 11. *Dyer* 140. *pl.* 43.

(c) One Termor cannot ſurrender to another Termor. 1 *Leon.* Caſe 420.

(d) He who hath an Eſtate for twelve Years cannot ſurrender to him who hath an Eſtate for ten Years, becauſe there is no Reverſion to the Leſſee for ten Years.

pl. 49. Poph. 30. Co. Litt. 218. b. 2 Vent. 326.

If Leſſee for twenty Years takes a Leaſe to commence ten Years after, it is a Surrender.

Lessee for twenty Years cannot ſurrender the laſt ten.

Years. Leſſee for twenty Years takes a Leaſe of three Years, to commence ten Years after; this is a preſent Surrender of the whole Term; for it cannot be a Surrender of the laſt ten Years, and remain for the firſt: For that will make a Fraction of the Term; neither can he who hath a Leaſe for twenty Years ſurrender the laſt ten. 5 *Rep.* 11. *a. b.* *Bro.* Tit. *Leaſes* 14. *Dyer* 93. *pl.* 28. *Perk. ſect.* 617. 3 *Leon.* 244. *Cr. Eliz.* 521, 605. 2 *Roll. Abr.* 495.

Leſſee for Years may ſurrender to the Grantee for a Year of a Reverſion.

**Where there is a Leſſee for twenty Years, and the Leſſor grants the Reverſion to another for one Year, and the Leſſee ſurrenders to him, this is a Surrender of the Leaſe of twenty Years, and is the ſame Thing as if he had taken another Leaſe of the Leſſor (a) himſelf.** Cro. El. 302. pl. 1. 2 Vent. 326. Poph. 30. Co. Lit. 218. b.

(*a*) For as he may ſurrender to him who hath the Reverſion in Fee; ſo he may to him who hath the Reverſion of a Term. *Cro. Eliz.* 303. *pl.* 1.

If Leſſee of a Manor takes a Leaſe of the Bailiwick; it is not a Surrender.

**Leſſee of a Manor accepts of a Leaſe of the Bailiwick of the ſame Manor, during his Leaſe; this is not any (b) Surrender of his Term, becauſe it is diſtinct, and of another Thing than what was leaſed before.** Cro. Jac. 176, 177. pl. 16. Noy 12. 2 Roll. Abr. 496.

(b) There alſo appearing no Intention that it ſhould be a Surrender. *Vide Cro. Jac.* 176, 177. *pl.* 16.

But if Leſſee of a Houſe take a Grant of the Cuſtody of the Houſe, it is a Surrender.

**But where Leſſee for Years of a Houſe accepts of a Grant of the Cuſtody of the ſame Houſe; this is a Surrender, for that the Cuſtody of the ſame Thing let before is another Intereſt in the ſame Thing leaſed, and cannot ſtand with the firſt Leaſe.** Cro. Jac. 177. pl. 16. Dyer 200. pl. 62. 2 Rol. Rep. 357.

If Leſſee for Years take a Grant of a Rent-charge out of the Land for Life; or Leſſee for Life take for Years; it is no Surrender.

**If a Leſſee for Years takes a Grant of a Rent-charge out of the ſame Land for Life; or if Leſſee for Life take a Grant of a Rent-charge for Years, that is not any Surrender: Becauſe he might have the Benefit of that Rent after the Eſtate in the Land is determined.**

But if Leſſee for Life take a Rent-charge for Life out of the ſame Land, it is a Surrender.

**But if Leſſee for Life takes a Grant of a Rent-charge for Life out of the ſame Land, this is a Surrender; for otherwiſe the Rent-charge cannot take Effect.** Cro. Jac. 177. pl. 16. 2 Roll. 496. Cr. Eliz. 873. Mo. 636.

If Grantee of a Rent for Life, takes a Leaſe for Years of Part of the Land, and ſurrenders the Leaſe, the Rent is not ſuſpended, and as to the Leſſor and Leſſee the Leaſe is not in *Eſſe*.

Grantee of a Rent for Life accepts of a Leaſe for Years, of Part of the Land, and ſurrenders the ſaid Leaſe for Years; the Rent is not thereby ſuſpended but revived: For by the Surrender and Agreement of the Parties the Leaſe is abſolutely determined, and not in eſſe as to the Leſſor and Leſſee (a), and the Poſſeſſion and Intereſt is in the Leſſor without Entry. Cro. Car. 102. pl. 1.

If the King's Leſſee take a new Leaſe without reciting the old, it is void.

Where the King's Leſſee takes a new Leaſe for Years of the ſame Land, without Recital of the former Leaſe, this is meerly a void Leaſe, and no Surrender of the former Leaſe. Cro. Car. 198. pl. 24. Cro. Eliz. 231. pl. 24. 5 Rep. 93. b.

If an Officer for Life take a Grant of the ſame Office to him and another, it is not a Surrender.

Where an Officer, who holds by Grant his Office for his Life, accepts another Grant of the ſame Office to him and to another, it is not a Surrender of the firſt Grant. Vide 1 Ventr. 297.

The Huſband may ſurrender the Wife's Leaſe.

The Huſband may ſurrender the Wife's Eſtate in a Leaſe for Years. Hob. 204. Perkins 613.

How to plead a Surrender.

The Manner of Pleading of a Surrender, ſee in the Caſe of Thompſon and Leach, 2 Vent. and in Peyto and Pemberton's Caſe, Cro. Car. 101. pl. 1. Perk. ſect. 607, 608. Cr. Eliz. 156, 488. 1 Leon. 179, 280. 2 Leon. 50. 2 Roll. Abr. 497.

A Surrender may be to a Uſe.

A Surrender may be to an Uſe, for it is a Conveyance tied and charged with the Limitation of a Uſe. Cro. Eliz. 688. pl. 23.

Leaſe for Life, Remainder for Life, Remainder in Tail: If Leſſee ſurrender to him in Remainder in Tail, or to Leſſor, it is void.

If a Leaſe for Life is made of Land, the Remainder unto a Stranger for Life, Remainder to another Stranger in Tail, and the Leſſee doth ſurrender unto him in Remainder in Tail, or unto his Leſſor who hath the Fee in Reverſion; this Surrender is void (b) to take Effect as a Surrender, becauſe he to whom it is made hath not the immediate Eſtate in Remainder to him who made the Surrender.

But if he had been only a Leſſee for Years, and ſurrender'd with Words of Grant, it ſhall enure by way of Grant.

But if he who made the Surrender had but an Eſtate for Years, and in the Surrender

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But is in *Eſſe* as to Strangers.

(a) But it is *in eſſe* to a Stranger who is to have any Benefit thereby. *Cro. Car.* 102. *pl.* 1. *Co. Litt.* 338. *b.* Therefore if Leſſee for Years grant a Rent-charge, and afterwards ſurrenders, yet for the Benefit of the Grantee the Term ſhall be in Continuance, though *in rei veritate* it is determined. 8 *Rep.* 145. *b.*

If Leſſee for Life ſurrenders for Years, it cannot take Effect as a Surrender.

(a) If Leſſee for Life ſurrenders unto his Leſſor for twenty Years, this ſhall not take Effect by way of Surrender; for then there remaineth an Intereſt in the Leſſee, which is as a mean Remainder between the Eſtate which is ſurrendered, and the Leſſor's der there are Woods, which amount unto a Grant of his Estate; the Surrenderee ſhall take the ſame by way of Grant of his Eſtate. Perkins 588.

If a Woman who has Title to Dower, ſurrenders to the Tenant, it is void.

If a Woman hath Title to have Dower by the Common Law, and ſhe doth ſurrender unto him againſt whom ſhe ought to have Dower, it is void; becauſe at the Time of the Surrender ſhe hath but a Right, and no Poſſeſſion. Perkins 500.

A Leaſe or Freehold made on Condition may be ſurrendered.

A Surrender either of a Leaſe or Freehold, made upon a Condition, is good. Perkins 554. Co. Litt. 218. b.

Leſſee for Years may ſurrender to him in Reverſion by Releaſe, but Tenant for Life muſt releaſe.

Leſſee for Years releaſes to him in the Reverſion; it is good by Surrender, as conſiſting in Point of Contract; but if Tenant for Life releaſes, it is by Way of Releaſe. 1 Lev. 145. Dyer 251. pl. 91, 93. Cr. Eliz. 2. Cr. Ja. 169. 1 Keb. 807.

Grant of Tenant for Life to him in Reverſion is a Surrender.

If Tenant for Life grants his Eſtate to him in Reverſion, this is a Surrender; and it muſt be pleaded according to the Operation it hath in Law. 4 Mod. Rep. 151.

If Leſſor enfeoff another in the Preſence and with the Conſent of Leſſee, it is no Surrender.

A Feoffment is made to a Stranger of Lands leaſed for Years, and Livery is made in the Leſſee's Preſence, and with his Conſent; this is no Surrender of his Term; but only his Aſſent to put the Feoffee into (b) Poſſeſſion. Dalliſon 19. pl. 6.

Tenant for Life, Remainder to his firſt Son, Remainder to B. in Tail, before the Birth of the Son ſurrenders to B. Whether this ſhall be a good Surrender?

A. Tenant for Life, Remainder to his firſt Son, Remainder in Tail to B. Tenant for Life, before the Birth of that Son, by his Deed ſealed and delivered to the Uſe of B. (but in his Abſence, and without his Notice) ſurrenders to B. and continues the Poſſeſſion till after the Birth of the Son; and then B. agrees to the Surrender: The Queſtion was, whether this ſhould be taken to be a good Surrender before the Son born? Three Judges held that here was no Surrender till B. had Notice of the Deed of Surrender, and agreed to it, and ſo the Remainder was veſted in the Son, and not defeated by the Agreement to the Surrender after his Birth. But Ventris held the contrary, and made a learned Argument; but notwithſtanding the Judgment was affirmed in the Court of King's Bench, upon a Writ of Error; but that Affirmation was reverſed by a Writ of Error in Parliament, upon the Reaſons of

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Leſſor's Reverſion. *Perkins* 615.

Livery of Leſſee no Surrender.

(a) So alſo where Leſſee makes Livery by Letter of Attorney, it is no Surrender of his Term, but ſhews his Aſſent. Which ſee in Title *Feoffment*.

of Ventris in his Argument, as the Book ſays. 2 Ventr. from 198 to 208. Show. Parl. Ca. 150. 3 Mod. 296, 301. 3 Lev. 284. 2 Salk. 618.

Chief Leaſes of Tenants for Life, &c. may be ſurrendered without ſurrendering the Under-Leaſes. 4 *Georgii* 2.

It is enacted by a late Statute, That if any Leaſe for Life, or Years, where there are Under-Tenants by Leaſe, ſhall be duly ſurrendered, in order to a Renewal, and a new Leaſe is made and executed by the Leſſor; the new Leaſe ſhall, without a Surrender of all the Under-Leaſes, be good and valid to all Intents and Purpoſes: (a) And the Leſſees, by Virtue of ſuch new Leaſe, ſhall be intitled to the Rents of the Under-Tenants, and have like Remedy for Recovery thereof; and the Leſſees ſhall hold the Lands as if the original Leaſe had been kept on Foot, 4 Geo. 2. cap. 28.

(a) Before this Act, ſuch Leaſes for Life, *&c.* could not be renewed without a Surrender of all the Under-Leaſes, and the Under-Tenants might have refuſ'd and prevented it. *Ibid.*

'Twas otherwiſe before this Act.

# Tenant for Life.

*Vide* Exception.
Habendum.
Leaſe.
Surrender.

What he is.

**Tenant for Life is where a Man lets** (a) **Lands to another for the Term of his own** (b) **or ſome other Perſon's** (c) **Life.** Litt. ſect. 56.

The Leaſe moſt ſtrongly againſt the Leſſor.

(a) The Leaſe ſhall be taken moſt ſtrongly againſt the Leſſor. 5 *Rep.* 8. *a.*

Leſſee puniſhable for Waſte, may commit a Forfeiture.

(b) *Viz.* The Leſſee's, or the Life of *J. S.* He ſhall be puniſhable for Waſte, and may commit a Forfeiture.

What Act makes a Forfeiture.

It is a Ground in Law, that whereſoever one who hath a particular Eſtate grants a greater Eſtate by Fine or Feoffment than his own Eſtate, or which poſſibly may longer endure; this is a Forfeiture: As if Tenant for his own Life grants to another for another's Life. *Jones*, Chief Juſtice, 70. 2 *Rep.* 55. *b.* *Co. Litt.* 251. 1 *Roll. Abr.* 854.

What an Occupancy is.

It may be deviſed by Will.

Or the Heir ſhall be chargeable as Aſſets by Diſcent.

Where it ſhall go to the Executors.

(c) When *Littleton* wrote, upon the Death of the Tenant for another's Life, there then was an Occupancy. *Co. Litt.* 41. *b.* But the Law as to that is ſince altered by Statute, which ſays, that an Eſtate *pur auter vie* may be deviſed by Will in Writing: And if no Will be made thereof, that then the ſame ſhall be chargeable in the Hands of the Heir, (if it ſhall come to him) by reaſon of a ſpecial Occupancy, as Aſſets by Diſcent: And if there is no ſpecial Occupancy, that then it ſhall go to the Executors or Adminiſtrators of the Grantee, and be Aſſets in their Hands, *per Statute* of Frauds and Perjuries, 29 *Car.* 2. *cap.* 3.

What is a ſpecial Occupancy.

A Special Occupancy is where a Leaſe is made to *A.* and his Heirs, during the Life of *B.* and *A.* dies in the Life of *B.* the Heir ſhall be Special Occupant; and yet he is not in by Diſcent, but he is particularly named, which is in the Nature of a Purchaſe. *Carter* 61. *See Comb.* 29c. where a Freehold veſts in a ſpecial Occupant without Entry or Claim.

It is a Freehold and now cannot paſs without Deed and Livery.

This is a Freehold, Sect. 57. and might formerly paſs without Deed, before the Statute of Frauds and Perjuries (a), but cannot now paſs, but by Deed and Livery (b), if of Things whereof Livery can be made. Sect. 59.

Where a Tenant for Life ſhall be abſent for ſeven Years, and no Account can be given of him; he ſhall be accounted as dead. 19 *Car.* 2. *cap.* 6.

By a Statute of King Charles II. it is enacted, That when Tenant for Life ſhall remain beyond the Seas, or elſewhere abſent himſelf in this Realm by the Space of ſeven Years together, and no ſufficient or evident Proof be made of his Life, in any Action to be brought by the Leſſor or Reverſioner, ſuch Perſon ſhall be accounted as naturally dead: And the Judges ſhall in any Action to be brought direct the Jury to give their Verdict as if ſuch Perſon was dead.

But if he return from beyond Sea, or appear to be living, then he ſhall recover the Profits with Intereſt.

But there is a Proviſo, That if ſuch Perſon ſhall return from beyond the Seas, or be made appear to be Living; that then he ſhall recover the full Profits of the Land, with Intereſt for the Time that he hath been kept out of the ſame by the Leſſor or Reverſioner. 19 Car. 2. cap. 6.

Perſons in Remainder after the Death of another, may have an Order to have him produced, and if not, to be taken to be dead.

And by a Statute ſince made, Perſons in Remainder or Reverſion of any Eſtate after the Death of another, on Affidavit in the Court of Chancery that they have Cauſe to believe ſuch other Perſon dead, and his Death conceal'd*, may move the Lord Chancellor to order ſuch Perſon to be produced; and if he be not produc'd he ſhall be taken to be dead, and thoſe in Reverſion may enter upon the Eſtate.

And if abroad he may be viewed by Commiſſioners. 6 *Ann. c.* 18.

Alſo by this Statute, if ſuch Perſon be abroad, a Commiſſion may be iſſued for his being viewed by Commiſſioners, &c. 6 Annæ, cap. 18.

What Privileges the Law gives to a Tenant for Life.

To every Eſtate for Life the Law gives him as an inſeparable Incident, three (c) Privileges:

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(a) *Vide* The Statute in Title *Leaſe for Years*.

(b) For the Nature of Livery, and how it is to be made, ſee at large in Title *Feoffment*.

* The Statute mentions conceal'd by Guardians, Truſtees, or others.

What Privileges a Tenant for Years hath.

(c) A Tenant for Years ſhall likewiſe have the ſame Eſtovers.

I. Houſe-bote, which is eſtoverium ædificandi & ardendi.
II. Plow-bote, which is eſtoverium arandi.
III. Hay-bote*, which is eſtoverium claudendi.

* Hedge-bote.

All theſe muſt be reaſonable, and the Tenant may take them upon the Land demiſed, without any Aſſignment, unleſs he hath covenanted to the contrary. Co. Litt. 41. b.

A Leaſe for Life to commence *in futuro* is void; and why.

A Leaſe for Life to commence in futuro is void, becauſe Livery cannot be made to a future (a) Eſtate. 5 Rep. 94. b.

Where it is made at a Day to come, and the Leſſor makes Livery after the Day, it is not void.

* The Freehold remaining in the Leſſor till Livery.

*Habendum* to one not Party to the Deed cannot take, unleſs by way of Remainder.

*Habendum* to one not Party to the Deed.

A. ſeiſed in Fee demiſes to B. Habendum to B. and alſo to D. and E. (b) for their Lives, and the Life of the ſucceſſive longer Liver (c); none can take but A. becauſe he is only Party to the Deed, and the Reſt are only named in the Habendum (d): Then being named in the Habendum, they cannot any ways take but by Way of Remainder; which here they cannot do, becauſe of the Incertainty who ſhould take. Raym. 143. Hob. 313, 314. Carter 145.

They named in the *Habendum* can only take by Remainder.

By Indenture between *A.* and *B.* his Wife of the one Part, and *C.* of the other Part, and not D. and E. Baron and Feme demiſe to *C.* and his Wife, and E. his Daughter, and to the longer Liver: Here the Wife and Daughter cannot take a joint Eſtate with *C.* becauſe not Parties, neither ſhall *C.* take any longer than for his own Life.

A. and B. his Wife, in Right of his Wife ſeiſed in Fee, demiſed (e) to D. and C. his Wife, and E. his Daughter, & eorum diutius viventium ſucceſſive (f): Here the Wife and Daughter cannot take a joint Eſtate with D. becauſe they are not Parties: Neither ſhall D. take any greater Eſtate than for his own

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(a) But where a Leaſe for Life is made *Habendum* at a Day to come, or *a die Datus*, and after the Day the Leſſor in Perſon makes Livery, there it ſhall be good: So if it is by Letter of Attorney, if he makes it *ſecundum formam Chartæ*, it is good. 1 *Roll. Abr.* 828. See *Hob.* 314. 2 *Rep.* 55. *b. Palmer* 29. *Dalliſon* 111. *pl.* 3. *Cr. Jac.* 563, 458. 3 *Bul.* 290. Becauſe no Eſtate paſſes till the Livery, but an Eſtate at * Will. See *Roll's Abr.* 828.

(b) *Habendum* to one not Party to the Deed is void by Way of *Habendum* the Eſtate, but good by Way of Remainder. *Hob.* 313. 2 *Roll. Abr.* 68. *Cr. Jac.* 564.

(c) *Sicut nominantur in Charta* ſhould have been in. *Dyer* 20. *Eliz.* 361. *a.*

(d) *Pro Termino vitæ eorum & alterius eorum ſucceſſive.* See *Hob.* 313, 314.

(e) By Indenture between *A.* and *B.* his Wife of the one Part, and *D.* of the other Part, and not *C.* and *E.*

(f) *Habendum* for the Term of their Natural Lives.

(a)

Life, and not for the Lives of himſelf, his Wife and (a) Daughter.

How the Word *Succeſſive* diſtinguiſhes the ſeveral Eſtates and Poſſeſſions.

And here the Deed, by Force of the Word Succeſſive limited to them before the Habendum (b), gives them Remainders; ſo that Succeſſive, as it is there placed, diſtinguiſhes their ſeveral Eſtates and ſucceſſive Poſſeſſions the one after the other. Hob. 314. Dyer 361. a.

A Leaſe to *A.* during the Lives of *B.* and *C.* and ſays not the Survivor, the Eſtate is not determined by the Death of one. A Diverſity between a Limitation and a Condition.

A Leaſe is made to A. during the Lives of B. and C. and doth not ſay of the Survivor of them; if one dies, the Eſtate is not determined: For by Conſtruction A. hath a Freehold during the Life of the Survivor. 5 Rep. 9. a. b. And a Diverſity was taken between a Limitation and a Condition.

A Leaſe for a hundred Years, if *B.* and *C.* ſo long live, is conditional; when either dies it is gone. But if during the Lives of *B.* and *C.* it is not gone by the Death of one of them.

For if a Man demiſe for a hundred Years, if C. and D. ſo long live †, if one of them dies the Leaſe is determined; becauſe it was conditional, if they ſo long live; (c) but if it was during the Lives of B. and C. this is a Limitation, and doth not ceaſe upon the Death of one of them. 5 Rep. 9. a. b. And 2 Ventr. 74. 1 Ventr. 163.

A Demiſe to *A.* and his Heirs, *Habendum* to him and his Heirs for three Lives:

Where a Prebendary demiſes to J. S. and his Heirs, Habendum (d) to him and his Heirs for three Lives; this is an Explanation of the Premiſſes, that the Leſſee and his Heirs ſhall have

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A Man may have an Eſtate for his own and another's Life.

(a) *Co. Litt.* 41. *b.* A Man may have an Eſtate both for his own and another Man's Life.

The Diverſity by placing of the Word *Succeſſive* before or after the *Habendum*.

(b) *Note* the Diverſity which ſeems to be in theſe Caſes, by placing the Word *Succeſſive* before or after the *Habendum*: But ſays my Lord *Hobart* upon Debate of the Matter, We were all of Opinion, that there was no material Difference between theſe two Caſes, and that the two Judgments could * not ſtand together; and thereupon adviſed the Parties to agree the Matter. *Hob.* 315.

* *Viz.* The firſt Judgment abovemention'd; to which Judgment, and not the latter, the Court inclined.

† The Word *If* makes a Condition.

(c) *Note* a Difference between a Limitation and Condition.

A Leaſe made to a Man and Woman for twenty Years, if they, or any Child between them to be begotten, ſhall ſo long live; and one of them died: And held that it ſhall endure as long as any of the Perſons named in the Proviſo ſhall live. 1 *Leon.* 74.

(d) It was inſiſted upon, that the Premiſſes did paſs a Fee-ſimple, and that the *Habendum* ſhall not abridge it to an Eſtate for Lives. Chief Juſtice *Jones* 4.

This is for three Lives, as in the *Habendum.*

it, as is mentioned in the Premiſſes, which is but for the three Lives, as in the Habendum. Chief Juſtice Jones 4. 2 Keb. 865.

To *A.* and his Aſſigns, *Habendum* to him during his Life, and the Lives of B. and *C.* here is no Merger of the Lives of *B.* and *C.* for he hath but one Eſtate by one Deed.

A Leaſe is made to A. and his Aſſigns, Habendum to him during his Life, and the Lives of B. and C. here is no Merger of the Lives of B. and C. for the Leſſee hath but one Eſtate, by one and the ſame Deed, with this Limitation, viz. During his and the other two Lives; and he hath but one Freehold, and (a) therefore there can be no Merger. 5 Rep. 13. a.

(a) But there will be an Occupancy, if he doth not take care to prevent it. *Cro. El.* 182. *pl.* 3. How to prevent it, ſee before.

Leſſee ſhall not dig for Coals, unleſs the Coal-Mines are open.

If a Man hath Lands wherein are Coal-Mines, and he lets the Lands, if the Coal-Mines are open they ſhall paſs; but if they are not, the Tenant cannot dig for them. 5 Rep. 12. a. b.

How to plead a Leaſe for Life.

The Manner of Pleading of a Leaſe for Life is not virtute cujus he entered (b), but it ought to be virtute cujus he was ſeiſed. 1 Ventr. 244.

(b) Becauſe the Livery gave him Seiſin.

What Intereſt Leſſee for Life or Years of Land hath in the Trees.

When a Man demiſes his Land for Life or Years, the Leſſee hath but a particular Intereſt in the Trees, and the general Intereſt remains in the Leſſor; (c) for the Leſſee ſhall have the Maſt and Fruit of the Trees and Shadow for his Cattle, but the Intereſt of the Bodies of the Trees remains in the Leſſor (d), as Parcel of his Freehold and Inheritance. 11 Rep. 48. a. b. 4 Rep. 62. b.

What remains to the Leſſor.

They have only a ſpecial Intereſt ſo long as annext to to Land.

(c) Leſſee for Life or Years hath a ſpecial Intereſt or Property in Timber-Trees, ſo long as they are annex'd to the Land. 4 *Rep.* 62. *b.*

Where ſevered it is the Leſſor's.

But if the Leſſee, or any other ſevers them, the Leſſee's Intereſt is thereby determined; and the Leſſor may take them as Things which were part of his Inheritance. *Ibid.*

In whom the Property of the Timber is.

(d) The Property of the Timber is reſerved to the Leſſor by the Law, but he cannot grant it without the Licence of his Tenant; for the Tenant hath alſo an Intereſt in it, to have the Maſt and Shrowds for Fuel and Fences. *Dyer* 90. *a. b.* 4 *Rep.* 62. *b.*

Where it belongs to the Leſſor only.

Tho' if the Leſſor, or any other Perſon, cut down the Trees, the Property and Intereſt of the Leſſee is determined, and the Leſſor may take them as Parcel of his Inheritance, or bring Trover for them. 4 *Rep.* 62. *b.*

How the Leſſor may grant them to be cut down, and how not.

And the Leſſor may, during the Leaſe for Life, grant the Trees to a Stranger, to take Effect after the

Leſſee's Death; but he cannot grant them to be cut down during the Leſſee's Life; for that Grant will be void, by Reaſon of the Prejudice that would accrue thereby to the Tenant for Life. 11 Rep. 48. b.

By what Exception of Woods the Soil is excepted.

And where by Exception of Trees the Soil is not.

If Woods, whereof a Præcipe lies, are Parcel of a Manor, and I leaſe the Manor excepting the Woods, by this the Soil is excepted: But if I except all my Trees (not growing in my Woods, but in Arable and Paſture) in my Manor, there by the Exception of the Trees the Soil itſelf is not (a) excepted. 11 Rep. 49. b.

A Leaſe for Years except a Cloſe, this is no Part of the *Prædimiſſa*.

If a Man lets a Leaſe for Years, or Life, of a Farm, excepting one Cloſe: And the Leſſee covenants to do ſeveral Things concerning the Premiſſes, the Word Premiſſes ſhall not extend to the Cloſe excepted. 11 Rep. 50, 51. a.

Tenant for Life without Impeachment of Waſte cuts down Timber; whether the Reverſioner ſhall have the Trees.

Tenant for Life without Impeachment of Waſte (b), Reverſion in Fee to J. S. the Tenant for Life cuts down Timber: The Queſtion was, Whether the Reverſioner or Tenant for Life ſhould have the Timber? 4 Rep. 62. b. 63. a. Curia. If the Leaſe had been made for Life, without the Clauſe of Sans Impeachment of Waſte, he in Reverſion ſhould have the Trees; becauſe they are Part of his Inheritance; and alſo becauſe the Intereſt which the Tenant for Life had in the Trees was determined upon the Severance from the * Land. 4 Rep. 62. b. 63. a. See 11 Rep. 83. a. as to this Matter.

What is the Signification of the Clauſe, Without Impeachment of Waſte.

Alſo the Clauſe, Without Impeachment of Waſte, doth not give the Tenant for Life any greater Intereſt in the Trees than he had by the Demiſe of the Land; but he is thereby excuſed from any Action of Waſte to be brought againſt him, or for (c) Damages, or the Place waſted, to be recovered

Tho' ſuch a Grant ſhall excuſe him in an Action brought for cutting of them down, yet the Property remains in the Grantor.

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(a) Only ſufficient Nutriment out of the Land is reſerved to ſuſtain the Life of the Trees.

(b) It was ſaid, that the conſtant Opinion of all Ages was, that the Words *Sans* Impeachment of Waſte, give a Power to a Leſſee to make Waſte to his own Uſe, and it would now be dangerous to recede from that Opinion. 11 *Rep.* 83. *a.*

*Without Impeachment of Waſte, that is, without any Challenge or Impeachment of Waſte; and by Force thereof the Leſſee may cut down the Trees, and convert them to his own Uſe; but otherwiſe it is where the Words are, Without Impeachment by any Action of Waſte, for there the Diſcharge extends but to the Action, and not to the Trees themſelves; and in that Caſe the Leſſor ſhall have them. *Co. Litt.* 220. *a.*

(c) If I grant to one, that he ſhall not be impeached for cutting down all my Trees in ſuch a Wood, this ſhall ed againſt him. 4 Rep. 63. a. Nota; In the 11 Rep. 83. a. it is ſaid, That the Opinion of Wray, Chief Juſtice, and Manwood, cited in that Caſe, was not judicial, but upon an Arbitrament, without any Argument.

ſhall excuſe him in an Action brought againſt him for the cutting of them; but yet the Property and Intereſt remains in me; for no Property or Intereſt is hereby given him. 4 *Rep.* 63. *a.*

Who ſhall have them when cut down by Tenant in Tail after Poſſibility.

Where Tenant in Tail after Poſſibility cuts down Trees, the Reverſioner ſhall have them; for the Tenant had no particular Intereſt in the Trees. 4 *Rep.* 63. *a.*

What Damages ſhall be recovered by the Leſſee alſo for cutting down of Timber.

Where Lands are let *abſq; Impetitione Vaſti*, and a Stranger cuts the Trees, the Leſſee brings Treſpaſs, he ſhall not recover Damages for the Value of Trees; becauſe the Property is in the Reverſioner, ſo that the Leſſee can only recover for the breaking of his Cloſe, and the cropping. *Ibid.*

Where an Houſe falls down by Tempeſt or Accident, who ſhall have the Timber.

How it is where thrown down by the Leſſee.

If a Houſe happens to fall down by Tempeſt, or other Act of God, the Leſſee for Life or Years hath a ſpecial Intereſt in the Timber therewith to rebuild his Houſe if he will, for his own Habitation: But if the Leſſee throw down the Houſe, the Leſſor may take the Timber as Parcel of his Inheritance, and wherein the Leſſee's Intereſt is determined. 4 Rep. 63. a.

Timber-Trees thrown down by Tempeſt, are the Leſſor's: But Dotards are the Leſſee's.

Alſo if Timber-Trees are thrown down by the Wind or any other Accident, the Leſſor ſhall have them; becauſe they are Parcel of his Inheritance: But if they are Dotards, without any Timber in them, the Tenant for Life or Years ſhall have them. 4 Rep. 63. a. b.

Not Waſte to cut down dead Trees.

The Cutting down of dry, dead and hollow Trees, not being Timber, nor bearing Fruit or Leaf in Summer, is not Waſte. Co. Litt. 53. 2 Roll. Abr. 814. Noy 4.

Leſſee for Life may cut down Coppices, but muſt take Care to fence them.

They muſt not cut down Pollards, which have Timber in them.

A Tenant for Life may cut down Coppice-Wood, but muſt carefully Fence it, otherwiſe it is Waſte: Alſo he may cut down all ſuch Pollards which have been lopped; but muſt not cut down any Pollards which have Timber in them; which if he do, it is Waſte.

Waſte in general, in Tenants ſuffering Houſes to be in Decay, cutting Timber, ploughing up Meadows, &c.

Tenants ſuffering Houſes to be in Decay; or taking away Wainſcot, Doors, Windows, Benches, &c. fixed to the Freehold, is Waſte *. And the Cutting down of Timber-Trees to ſell; or permitting young Trees to be deſtroy'd by Cattle, &c. The Ploughing up of Ground, that Time out of Mind hath not been ploughed; or converting arable Land into Meadow or Wood; not keeping Banks of Rivers in Repair, whereby by Meadows receive Damage, &c. are Waſte. Co. Litt. 52, 53. Dy. 37.

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* Except they are put up by the Leſſee and taken down before the End of the Term, without damaging the Freehold. 1 *Salk.* 368.

Leſſor lets, excepting the Trees, after grants the Trees to the Leſſee, this doth not reunite them to the Land.

If the Leſſor lets the Land excepting the Trees, and afterwards the Leſſor grants the Trees to the Leſſee, and the Term ends; they are not re-united to the Land, but the Leſſee hath in Judgment of the Law an abſolute and divided Property in the Trees. 4 Rep. 63. b.

Where a Tenant for Life commits a Forfeiture.

Where Tenant for Life grants a greater Eſtate than he hath, as making of a Feoffment in Fee, levying of a Fine, or ſuffering of a Recovery, this is a Forfeiture of his (a) Eſtate. Litt. ſect. 415.

Who ſhall take Advantage of the Forfeiture.

(a) By a Condition in Law annexed to his Eſtate; and the Leſſor and his Heirs ſhall not only take Benefit of it, but alſo his Aſſigns. *Co. Litt.* 215. *a.*

Where he makes an Eſtate upon Condition, and enters for the Breach, he ſhall be Tenant for Life, but ſubject to the Forfeiture.

If Tenant for Life makes a Feoffment in Fee upon Condition, and enters for the Condition broken, he ſhall be Tenant for Life again, but ſubject to a Forfeiture: For although the Eſtate is reduced, the Forfeiture is not purged. Co. Litt. 202. b. 252. a. 1 Roll. Abr. 856.

What ſhall be a Forfeiture.

Leaſe at Will.

Fine levied.

Tenant for Life, &c. eſtopped to ſay, *Partes finis, &c.*

Tenant for Life makes a Leaſe for four Years, and afterwards makes a void Leaſe for Life; (viz. the Habendum to commence in futuro) the Tenant for Years attorns, the Term for Years expires, and the Tenant for Life leaſes at Will; and the firſt Tenant for Life levies a Fine to him Come ceo, &c. This Fine levied to the Tenant at Will is a Forfeiture; and the Tenant for Life and his Tenant at Will are eſtopped to ſay, Partes finis, &c. And of ſuch Eſtoppels, thoſe in Remainder, to whoſe Diſinheriſon they tend, ſhall take Advantage; for tho' not Parties, yet they are Privies in Eſtate to take Advantage of any Forfeiture, by any manner of Record, made to their Diſinheriſon. 2 Rep. 55. a. b. 56. a.

Who ſhall take Advantage of any Forfeiture.

Where the Grantee of the Reverſion may take Advantage of a Condition upon a Leaſe for Years, not upon a Leaſe for Life.

If a Man makes a Leaſe for Life upon Condition, that if the Leſſee goeth not to Rome by ſuch a Day, the Leaſe ſhall be void: Here the Grantee of the Reverſion can never take Advantage of this Condition; becauſe the Eſtate being a Freehold cannot ceaſe before an Entry: But if it had been a Leaſe for Years, there the Grantee ſhould have taken the ſame Advantage as the Leſſor; becauſe upon the Breach of the Condition the Leaſe became void without (b) Entry. Co. Litt. 214. b.

A Stranger may take Advantage of a void not voidable Thing.

(b) Of a void Thing a Stranger may take Benefit; but not of a voidable Eſtate by Entry. *Co. Litt.* 214. *b.*

A Leaſe to a Woman *durante viduitate*, or any like uncertain Time, the Leſſee hath a determinable Eſtate for Life.

If a Perſon grants an Eſtate to a Woman durante viduitate, or as long as the Grantee ſhall dwell in ſuch a Houſe, or for any like uncertain Time; the Leſſee hath, in Judgment of Law, an Eſtate for Life determinable, (a) and in Pleading ſhall alledge the Leaſe, and conclude, That by Force thereof ſhe was ſeiſed generally for Term of Life. Co. Litt. 42.

A Grant of a Rent of 20 *l.* till a hundred Pounds be paid; it is an Eſtate for five Years: But a Grant of a Manor worth 20 *l.* *per Ann.* till 100 *l.* be paid, is for Life determinable; becauſe of the Uncertainty of the Profits.

If a Man grants a Rent of twenty Pounds per Annum until a hundred Pounds is paid, there he has an Eſtate but for five Years; but a Grant of a Manor that at the Time of the Leaſe or Grant made is worth twenty Pounds per Annum until a hundred Pounds is paid, is an Eſtate for Life determinable, becauſe the annual Profits are uncertain. Ibid.

Tenants by Statutes and *Elegits* have but Chattels.

But Tenants by Statute-Merchant, Staple and Elegit have incertain Intereſts, and yet they have but Chattels, and no Freehold. Ibid.

A Deviſe of Land for the Payment of Debts, the Executors have but a Chattel.

So a Deviſe of Lands for Payment of Debts, the Executors have only a (a) Chattel, and an incertain Intereſt, until the Debts are paid. Co. Litt. 42. a.

If Tenant in Fee make a Leaſe for Life, it ſhall be conſtrued to be the Life of the Leſſee; *Alter* where Tenant in Tail makes it.

If Tenant in Fee makes a Leaſe for Life generally, it ſhall be conſtrued to be for the Life of the Leſſee; but if Tenant in Tail makes a Leaſe for Life, without mentioning for whoſe Life, it ſhall be conſtrued to be for the Life of the Leſſor. Co. Litt. 42.

Tenants in Tail may make Leaſes for three Lives, or twenty-one Years, by Statute on certain Conditions.

Tenants in Tail are enabled by the Statute 32 H. 8. cap. 18. to make Leaſes for three Lives, or twenty-one Years, to commence from the Time of making, or ſome ſhort Time after; they are to be of Lands or Tenements which have been moſt commonly let to Farm, by the ſpace of twenty Years; and the accuſtomed yearly Rent, paid within that Time, muſt be reſerved on ſuch Leaſes, &c. And the Leaſes according to the Statute, bind the Iſſues in Tail; but not thoſe in Reverſion or Remainder. 5 Co. Rep. 5.

And bind the Iſſue in Tail; not him in Remainder.

Leaſes by a Huſband of the Wife's Land how to be made.

The Statute 32 H. 8. Empowers a Huſband to make Leaſes of Land in Tail, held in his Wife's Right; ſo as in ſuch Leaſes the Conditions before mentioned are obſerv'd, and the Wife be made a Party to, and ſeal the Leaſes; and the Rent is to be reſerved to the Huſband and

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(a) If Livery is made.

(a) For if it ſhould be conſtrued an Eſtate for Life determinable, then by their Death the Eſtate ſhould ceaſe, and the Debts be unpaid; but being a Chattel, it goes to the Executors of the Executors. *Co. Litt.* 42. *a.*

and Wife, and her Heirs, &c. If a Leaſe of the Wife's Land is not warranted by the Statute, it is good againſt the Huſband, tho not againſt the Wife. Co. Litt. 362.

A Leaſe to Baron and Feme for their Lives, Remainder to the Executors of the Survivor; the Husband grants away the Term, and dies; this ſhall not bar the Wife.

A Leaſe is made to Huſband and Wife for their Lives, Remainder to the Executors of the Survivor of them; the Huſband grants away the Term, and dies: Adjudged that the ſame ſhould not bar the Wife, for that ſhe had but a Poſſibility. Co. Litt. 46. b. 2 Roll. Abr. 48.

Tenant for Life, Remainder in Tail, Remainder in Tail; Tenant for Life and the firſt Remainder-Man join in a Fine; this is no Forfeiture; and why.

Tenant for Life, Remainder in Tail, Remainder in Tail; Tenant for Life and he in the firſt Remainder in Tail join in a Fine Sur Conuzance, &c. to another; this is no Forfeiture of the Eſtate for Life; becauſe each gave what he lawfully might give; and the Law conſtrues this to be firſt the Grant of him in the Remainder in Tail; and afterwards the Grant of Tenant for Life. 1 Rep. 76. a. Cr. Eliz. 827. Mo. 634. 1 Vent. 160.

Tenant for Life, Remainder in Tail, Reverſion in Fee; Tenant for Life enfeoffs the Reverſioner in Fee, this is a Forfeiture. It deveſts the Eſtate-Tail in Remainder.

So where he in Remainder in Tail infeoffs the Reverſioner.

If there be Tenant for Life, Remainder in Tail, Reverſion in Fee; and Tenant for Life enfeoffs him in Reverſion in Fee; this is a Forfeiture of his Eſtate, and deveſts the Eſtate-Tail in the Remainder. 1 Rep. 40. a. 1 Roll. Abr. 857.

Where there is Tenant in Tail, Remainder in Tail, Reverſion in Fee, he in Remainder in Tail infeoffs the Reverſioner; this is a Diſcontinuance. 1 Rep. 140. a.

An Action of Debt lies for Arrears of Rent as well againſt Leſſee for Life, as Leſſee for Years. 8 *Annæ Reginæ*.

At the Common Law there was no Remedy for the Recovery of the Rent againſt Tenant for Life, but only a Diſtreſs; but now by an Act made 8 *Annæ Reginæ*, it is enacted, That any Perſon having Rent arrear, or due upon any Leaſe or Demiſe for Life or Lives, may bring an Action or Actions of Debt for ſuch Arrears of Rent, in the ſame manner as they might have done in caſe ſuch Rent were due and reſerved upon Leaſe for Years: See this Statute at large in Title *Tenant for Years*.

How the Proceedings ſhall be for the Recovery of the Rent upon the abovemention'd Act.

*Note*; How Diſtreſſes ſhall be made, and what Proceedings ſhall be thereupon for the Recovery of Rent due by Leſſee for Years and Leſſee at Will, ſee in Title *Tenant for Years*; where the Statute of the 2 *W. & M. Seſſ.* 1. *cap.* 5. intitled, *An Act for enabling the Sale of Goods diſtrained for Rent, in caſe the Rent be not paid in a reaſonable Time*, is ſet forth with ſome Obſervations thereupon.

# Tenant at Sufferance.

Who is a Tenant at Sufferance.

He who holds over his Term.

Tenant at Sufferance (a) is he who at the first came in by lawful Demiſe, and after his Eſtate ended continues the Poſſeſſion wrongfully, and holdeth over. Co. Litt. 57. b.

(a) He is a Tenant without Agreement after a particular Eſtate ended. *Cart.* 64.

What he is.

How he is made.

Every Tenant at Sufferance is made by the Laches of his Leſſor. 2 *Leon.* 143.

Leſſor cannot bring Treſpaſs till Entry.

If the Leſſee hold over his Term, the Leſſor cannot bring Treſpaſs till actual Entry. 5 *Mod.* 384.

What amounts to a new Leaſe.

But where he holds over, and continues to pay his Rent, as before, quarterly; here this Payment, and the Acceptance of the Rent, amounts to a new Leaſe. *Aleyn* 4.

Where Tenants *pur auter vie* for Years, or at Will, hold over.

What Remedy given for the Arrears of Rent by the Statute of 8 *Annæ Reginæ*.

By the Statute of 8 Annæ, whereas Tenants pur auter vie, for Years, or at Will, do frequently hold over the Lands let, after the Determination of their Eſtates; it is enacted, That where any ſuch Rent is arrear at ſuch Determination, the Leſſor may within ſix Kalendar Months after ſuch Determination, and during the Continuance of the Leſſor's Title and the Tenant's Poſſeſſion, diſtrein for ſuch Arrears.

What may admit a Man to be Tenant at Sufferance, and not Tenant at Will.

Where a Man occupies by a tacit or preſumed Conſent of another Man, that other Man may admit him to ſome Purpoſes to be Tenant at Sufferance, and not at Will. Carter 64.

Where Tenant at Sufferance ſows, to whom the Corn belongs.

If Tenant at Sufferance ſows the Land, and the Party who hath Right enters before Severance, there the Party entring (b) ſhall take the Corn with the Land as he finds it, it being the Folly of him who ſowed without Title. Co. Litt. 57. b.

Till Entry the Right is in the Tenant.

(b) Until Entry the Right remains in the Tenant, becauſe he hath the Poſſeſſion; ſo that the Owner hath no Remedy for the Corn, nor can bring Treſpaſs until an actual Entry.

He makes a Leaſe for Years; this is a Diſſeiſin.

Tenant at Sufferance makes a Leaſe for Years; this is a Diſſeiſin, and turns the (a) Eſtate to a Right. Carter 162.

(a) If he grants a Copyhold Eſtate, this is void. 2 *Leon.* Caſe 59.

He grants a Copy, it is void.

A Releaſe to him is void.

Where a Man makes a Releaſe of his Right to a Tenant at Sufferance, (b) this is void. 3 Leon. Caſe 204.

(b) For Want of Privity.

An Intrudor cannot be Tenant at Sufferance, and why.

An Intrudor cannot be Tenant at Sufferance, becauſe at firſt he enters by Wrong; and none can be Tenant at Sufferance but he who comes in by a lawful Title. 2 Leon. Caſe 182.

Where Tenant for Life becomes Tenant at Sufferance.

Tenant for Life forfeits his Eſtate, and continues the Poſſeſſion; he is but Tenant at (c) Sufferance. 3 Leon. Caſe 204.

(c) A Deviſe for Life upon Condition, that the Eſtate ſhall ceaſe after Breach of the Condition; if the Deviſee afterwards continues in Poſſeſſion, he is but Tenant at Sufferance. 3 *Leon.* Caſe 204.

Where it is upon a Deviſe for Life upon Condition.

**But where Tenant for Years ſows the Corn, and it is not ripe before the Term end, he cannot come after the End of his Term to**

But when Tenant for Years ſows the Corn, which is not ripe before the Term ends, he cannot come afterwards to cut and carry it away.

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# Tenant at Will.

Who is Tenant at Will.

**Tenant at Will is where Lands are let, (a) Habendum at the Will of the Leſſor (b) here the Leſſor may put out the Leſſee when he pleaſeth. But if the Leſſee ſows the Land, and before the Corn is ripe the Leſſor puts him out; yet the Leſſee ſhall have the Corn, and free Ingreſs, Egreſs and Regreſs (c), to cut and carry (d) it away.**

He that ſows with a Title ſhall reap.

He hath no Eſtate till actual Entry.

Tenant at Will hath no Eſtate in him, until his actual Entry. *Vide* Title *Entry*. See *Carter* 67.

He may hold by Parol, or by Writing.

(a) This may be by Parol, or in Writing; but it is moſt commonly by Parol.

Muſt be at the Will of both Parties.

Where it is to be held at the Will of the Leſſor, the Law implies the Will of the Leſſee alſo.

(b) Regularly every Leaſe at Will muſt be at the Will of both Parties. *Co. Litt.* 55. *a.* And therefore when the Leaſe is made to hold at the Will of the Leſſor; the Law implies it to be at the Will of the Leſſee alſo: And ſo it is where the Leaſe is made, To hold at the Will of the Leſſee; this muſt alſo be at the Will of the Leſſor.

Where the Law gives any Thing, it impliedly gives what is neceſſary.

(c) When the Law doth give a Man any Thing, it impliedly gives what is neceſſary for the taking and enjoying thereof. *Co. Litt.* 56. *a.* *Litt. ſect.* 69. And if the Leſſor ſhall diſturb his Leſſee in the carrying away of his Corn, an Action will lie againſt him. *Co. Litt.* 56. *a.*

Tenant at Will ſows, and determines his Will; the Leſſor ſhall have the Corn.

(d) If Tenant at Will ſows the Ground, and he afterwards determines his Will, and refuſes to occupy the Ground, the Leſſor ſhall have the Corn, becauſe he loſeth his Rent. *Co. Litt.* 55. *b.*

Who ſhall have the Corn where the Leaſe determines by the Act of the Leſſee.

Where the Eſtate of the Leſſee being incertain is defeazable by a Right Paramount, or if the Leaſe determines by the Act of the Leſſee; as by a Forfeiture, Condition, *&c.* There he that hath the Right Paramount, or enters for any Forfeiture, ſhall have the Corn. *Co. Litt.* 55. *b.*

But when Tenant for Years ſows the Corn, which is not ripe before the Term ends, he cannot come afterwards to cut and carry it away.

But where Tenant for Years ſows the Corn, and it is not ripe before the Term ends, he cannot come after the End of his Term to cut and carry it (a) away. Litt. ſect. 63. For when Tenant for Years who knows the Certainty of his Term will ſow it, it is his own Folly to do it; but when the Term depends upon an Incertainty, there it is otherwiſe. Co. Litt. 56. a.

Where Tenant at Will ſhall be Tenant at Sufferance.

(a) Until the Leſſor enters, he who was Tenant for Years, holding over, ſhall be Tenant at Sufferance; and he may well carry off his Corn: But when the Leſſor enters upon his Tenant at Sufferance, this veſts the Corn in the Leſſor. *Vide Co. Litt.* 57. *b.*

Leſſor's Entry veſts the Corn in him.

Where Tenant at Sufferance becomes Tenant at Will.

But if the Tenant at Sufferance continues to pay his Rent quarterly, or half-yearly, as before; it will amount to a Tenancy at Will. *Aleyn, Rep.* 4.

Who ſhall have the Graſs after Tenant at Will is turned out.

If the Leſſor puts out his Tenant at Will before the Graſs is cut, yet the Leſſor ſhall have it, becauſe it is the natural Product of the Earth. Ibid.

If he determines his Will in Part of a Quarter, he ſhall pay for the whole Quarter.

Where Tenant at Will, paying quarterly, determines his Will before the Quarter ends, he ſhall pay that Quarter's Rent. *Ibid.* And if the Leſſor determines his Will before the Quarter ends, he ſhall loſe that Quarter's Rent. 3 *Salk.* 222.

No Tenancy againſt the King.

Againſt the King there is no Tenancy at Will, but he who holds over is an Intruder upon the King. *Co. Litt.* 57.

There is an expreſs Ouſter of a Tenant at Will, and an implied Ouſter. Co. Litt. 56. a.

What is an expreſs Ouſter of Tenant at Will.

An expreſs Ouſter is where the Leſſor comes upon the Land (b) and forbids the Leſſee to hold the Land any longer.

What Words will determine the Will.

(b) Words ſpoken off from the Land will not determine the Will, until the Leſſee hath Notice thereof. *Co. Litt.* 55. *b.* But an actual Entry in the Abſence of the Leſſee will determine it. *Ibid.*

What is an implied Ouſter.

An implied Ouſter is where the Leſſor without the Conſent of the Leſſee (c) enters into the Land, and cuts down a Tree, or digs a Turf, &c. this is a Determination of his Will. Co. Litt. 55. b. For otherwiſe it would be a Wrong, which the Law will not conſtrue.

How Entry is to be made into Lands.

(c) The Manner of Entry is thus: The Leſſor (or ſome other Perſon authorized by him) goes to the Land; and if it be the Leſſor, he enters thereupon, and ſays theſe or the like Words, *I do here enter and take Poſſeſſion of my Land:* If it be ſome other Perſon who enters, then he muſt ſay; *I here enter into this Land, and take Poſſeſſion thereof for* J. S. (who is the Leſſor.)

Leſſor.) And he afterwards may (if he thinks fit) cut a Twig or Turf: It is very neceſſary to have two or more Witneſſes to the Entry, and of the Words mentioned in it, and for them to ſet their Hands to it, for the Preſervation of their Teſtimony.

A Woman leaſes at Will, and marries; this is no Countermand of the Leaſe.

Where a Woman makes a Leaſe at Will, reſerving Rent, and takes Husband, this is not a Countermand of the Leaſe at Will, and the Husband and Wife may diſtrein, or bring their Action for the Rent.

So where it is made to a Woman who marries.

And ſo it is where a Leaſe is made to a Woman at Will, rendring Rent, and ſhe takes (a) Husband. Co. Litt. 55. b. 5 Rep. 10. a. b.

(a) A Feme Covert may have a Tenant at Will, and be Tenant at Will, and cannot countermand it. 5 *Rep.* 10. *b.*

**A Feme Covert may have and be a Tenant at Will, but cannot countermand it.**

How it is where there is a Leaſe by two to two at Will, and one of the Leſſors dies.

So if a Leaſe is made by two Perſons to other two at Will, and one of the Leſſors dies, the Leaſe at Will is not determined in either of theſe Caſes. Co. Litt. 56. b.

Where Tenant at Will grants over his Eſtate, and Grantee enters, he is a Diſſeiſor.

Where Tenant at Will grants over his Eſtate, and the Grantee enters; the Grantee is a (b) Diſſeiſor. Co. Litt. a. Vide Title Diſſeiſin, and 3 Mod. 150.

(b) Becauſe Tenant at Will had not ſuch an Eſtate in him that he could grant over, and therefore his Grant is void; and this amounts to a Determination of the Will; and Treſpaſs will lie againſt him. *Co. Litt.* 57. *a.*

Where a Man enters by the Conſent of the Owner, he is Tenant at Will.

If a Man enters into Land by the Conſent of the Owner (c), he is Tenant at Will. Raym. 147.

(c) Or there is an Agreement that he ſhall receive the Profits. *Carter* 64. Tenant at Will makes a Leaſe for Years; this is a Diſſeiſin, *Carter* 162. at the Election of the Parties. *Cro. Car.* 302. *pl.* 6. *Cro. Eliz.* 830. *pl.* 38.

**Tenant at Will leaſes for Years, this is a Diſſeiſin at the Election of the Parties.**

The Payment of Rent ſhall make a good Tenancy at Will.

So where a Man is in Poſſeſſion, and hath paid any Rent to the Landlord, though but a Quarter's Rent, if the Landlord can prove that the Tenant hath paid a Quarter's Rent or more, (although there was no Agreement between the Owner of the Land and the Tenant,) yet this ſhall amount unto a good Tenancy at Will.

Where the Feoffor becomes Tenant at Will.

Where a Man makes a Feoffment in Fee upon Condition to perform his Will, and the Feoffor enters, he is Tenant at Will. Litt. ſect. 463. Raym. 147. See Geary and Bearcroft in Carter 57, 58, &c.

What ſhall make the Mortgagor Tenant at Will to the Mortgagee.

The Perception of Profits ſhall make the Mortgagor become Tenant at Will to the Mortgagee. Raym. 147. Cro. Jac. 659, 660. pl. 9.

There

Diverſity where it determines by his own Will, or by the Act of God.

There is a Diverſity where the Eſtate of Tenant at Will determines by his own Act, and when it determines by the Act of God. Carter 66, 67. As for Inſtance,

Where he becomes Tenant at Sufferance.

If a Man makes a Leaſe at Will, and the Leſſor dies, this Eſtate at Will is determined; and here the Tenant at Will becomes Tenant at Sufferance, and the Heir cannot bring Treſpaſs till his Entry.

Treſpaſs lies againſt him for a voluntary Treſpaſs.

But if the Tenant at Will commits a voluntary Treſpaſs, by pulling down of Houſes, cutting of Trees, &c. Treſpaſs lies without Entry: So if the Leſſee dies, and his Heir enters, the Leſſor may bring Treſpaſs (a) againſt him. Carter 66, 67. Litt. ſect. 82.

He is not to repair, but muſt not commit voluntary Waſte.

Tenant at Will is not bound to repair as Tenant for Years is; but if he commit voluntary Waſte (b) as pulling down of Houſes (c), felling of Trees, &c. Treſpaſs will lie againſt him: So if I lend my Cattle to another to do him Service, and he kills them, Treſpaſs (d) lies againſt him. Litt. ſect. 71.

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A Leaſe *de Anno in Annum quamdiu*, &c.

Leſſee died in part of the third Year.

How it is.

(a) A Leaſe was made *de Anno in Annum quamdiu ambabus partibus placeret*; and the Leſſee occupied for two Years, and Part of the third, and died. *Per Gawdy* and *Fenner*: When the Leſſee occupied it for Part of the third Year, it is then a Leaſe certain for that Year alſo; ſo as neither the one nor the other can determine the Will during that Year. *Cro. Eliz.* 775. *pl.* 6. 1 *Mod.* 3. 1 *Sid.* 423. 2 *Keb.* 543. *Kelw.* 63. See 3 *Bacon Abr.* 433. 2 *Salk.* 414.

No Remedy againſt him for permiſſive Waſte.

(b) But for permiſſive Waſte there is no Remedy. *Co. Litt.* 57. *a.* 5 *Rep.* 13. *b.* As where Tenant at Will keeps his Fire ſo negligently, that it burns down the Houſe, no Action lies for this permiſſive Waſte; becauſe it is the Folly of the Leſſor, to let at Will, and not to take a Covenant to reſtrain the Tenant from committing of Waſte. 5 *Rep.* 13. *b.* But I have known where an Houſe was let by Leaſe, and the Leſſee let it at Will, in whoſe Poſſeſſion * it was burnt; that there an Action did lie againſt the firſt Leſſee, upon his Covenant; and he, *viz.* the firſt Leſſee, had his Action over againſt his Tenant at Will. *But ſee* 4 *Mod.* 9. 1 *Show.* 310.

* *Viz.* The Leſſee's at Will.

(c) This cutting down of Timber, and pulling down of Houſes, do amount to a Determination of the Will. *Co. Litt.* 57. *a.* 5 *Rep.* 13.

(d) Or an Action upon the Caſe, or Trover, at the Plaintiff's Election. *Co. Litt.* 57. *a.*

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The Leſſor may diſtrein or bring Debt, at his Pleaſure.

In Debt for Rent the Occupation of the Tenant muſt be averred.

The Leſſor may diſtrein for his Rent, or bring Debt (a) at his Pleaſure. Litt. ſect. 72.

(a) In Debt for Rent upon a Leaſe at Will, the Occupation of the Tenant muſt be averred. 1 *Ventr.* 108. *Salk.* 209. 1 *Vent.* 41. 1 *Mod.* 3. 1 *Sid.* 423.

Where the Leſſee at Will may plead that the Reverſion is granted away.

If the Reverſioner upon a Leaſe at Will grants the Reverſion, and brings Debt for the Rent; the Leſſee may plead in Bar, that he hath granted away the Reverſion. 1 Ventr. 248.

Outlawry of the Leſſor is no Determination of the Will until a Seizure; nor an Extent, until a *Liberate*.

But Outlawry of the Leſſor ſhall not determine the Will, until a Seizure; nor an Extent upon it, until the Liberate.

How Diſtreſſes ſhall be made for Rent, and ſold, by the Statute of 2 *W.* & *M. ſeſſ.* 1. *cap.* 5. See alſo another additional Statute to that Purpoſe.

How Diſtreſſes ſhall be made of the Goods of Tenant at Will for Non-payment of Rent, ſee in Title Tenant for Years, the Statute of 2 W. & M. cap. 5. for the Sale of Diſtreſſes for Rent.

See there is alſo another Statute made 8 Annæ Reginæ, cap. 17. with other Directions for the Recovery of Rents, againſt Tenants at Will, &c.

# Tenant for Years.

What a Tenant for Years is.

Tenant for Years is where a Man lets Land (a) by Deed, or without Deed, (b) for a certain Number of Years; * when the Leſſee enters by Virtue of this Leaſe (c), then is he Leſſee for Years, and the Leſſor may either bring an Action of Debt, or diſtrain for his Rent: But in ſuch Caſe, if the Leſſor was not ſeiſed at the Time of the Leaſe let, the Leſſee may (if it is by a Deed-Poll or a Leaſe-Parol) plead, that the Plaintiff nihil habuit in tenementis tempore dimiſſionis. Litt. ſect. 58. But if it is by Indenture, he is eſtopped to ſay ſo. Co. Litt. 44. a.

* The Word *Covenant* will make a Leaſe, tho' the Word *Grant* be omitted. 2 *Mod.* 80.

Where he may plead that the Leſſor *Nihil habuit in tenementis, &c.*

The Leſſor ought to be in Poſſeſſion, or deliver the Leaſe upon the Land.

(a) *Note*; The Leſſor ought to be in Poſſeſſion when he makes the Leaſe, or elſe to deliver it upon the Land. *Vide* Title *Entry*, and *Cro. Jac.* 658, 660. *pl.* 9. *Carter* 161.

By the Statute of Frauds and Perjuries, 29 *Car.* 2 *cap.* 3.

(b) By the Statute of Frauds and Perjuries it is enacted, That all Leaſes, Intereſts of Freeholds, or Terms for Years, of any uncertain Intereſt of, in, to, or out of any Meſſuage, *&c.* created by Livery and Seiſin only, or Parol, and not put into Writing, and ſigned by the Parties ſo creating or making the ſame, or their Agents thereunto authoriſed by Writing, ſhall have the Force and Effect of Leaſes or Eſtates at Will only, and ſhall not either in Law or Equity be taken to have any other or greater Force or Effect. 29 *Car.* 2. *cap.* 3.

Not put into Writing, ſhall be but for Will only.

Excepting Leaſes not exceeding three Years.

Excepting all Leaſes not exceeding the Term of three Years from the making thereof, whereupon the Rent reſerved during the Term ſhall be two Thirds at leaſt of the improved Value. *Ibid.*

Till the Leſſee enters he hath but an *Intereſſe Termini.*

(c) Until the Leſſee enters he has only an *Intereſſe Termini*, and no Poſſeſſion. 1 *Inſt.* 278. *a.* *Plowd.* 142. *b.* 423. *a.* 5 Co. 124. *Cr. Jac.* 61. 2 *Vent.* 203, 264. Neither can he bring Treſpaſs. 1 *Inſt.* 46. *b.* 270. 1 *Mod. Rep.* 262, 263.

How it is where the Leaſe is by Bargain and Sale for Years.

But if the Leaſe was by Bargain and Sale for Years, in Conſideration of Money, there the Tenant is, upon the Sealing of the Deed, in Poſſeſſion to all Intents whatſoever, except to the bringing of an Action of Treſpaſs. *Carter* 66, 78. So alſo if the Word *Demiſe* in Conſideration of Money is in; but it will not be ſafe to truſt upon the bare Reſervation of Rent, to be a ſufficient Conſideration to raiſe an Uſe. *Vide* 1 *Mod. Rep.* 263. *Vide* 2 *Mod. Rep.* 249.

So if the word *Demiſe*.

There are three Principals in every Leaſe.

In every Leaſe there are three Principals, (viz.) the Leſſor, Leſſee, and Thing let; and by the Premiſſes the Leſſor and Leſſee, and Thing let, are to be expreſſed: And by the Habendum the Intereſt which the Leſſee ſhall have ought to be ſet forth; and if there is no Habendum in the Leaſe, the Leſſee ſhall be Tenant at Will. 3 Leon. Caſe 60.

The Term muſt have a certain Beginning and Ending.

A Leaſe without a certain Beginning is void.

Regularly, in every Leaſe for Years the Term muſt have a certain Beginning (a) and a certain End. Co. Litt. 45. b.

(a) A Demiſe having no certain Commencement is void. *Vaugh.* 85. 1 *Rep.* 155. *a.*

1. The Years muſt be certain when to take Effect.

But it may be made upon a Contingency, or a Condition precedent.

1. The Years muſt be certain when the Leaſe is to take Effect, in Intereſt or (b) Poſſeſſion. Co. Litt. 45. b. 6 Rep. 35. a.

(b) But a Leaſe may be made upon a Condition or Contingency precedent. 6 *Rep.* 35. *a.* As if I grant, that if you pay me ſuch a Sum at *Michaelmas*, you ſhall have my Land at *B.* for one and twenty Years.

Leaſe from Year to Year is good for two Years.

If one makes a Leaſe for a Year, and ſo from Year to Year, it is a Leaſe for two Years; and afterwards it is only an Eſtate at Will: And if from three Years to three Years, it is a good Leaſe for ſix Years. 1 *Lutw.* 213.

A Leaſe for a Year, &c. *ſic de Anno in Annum* is for three Years.

Where a Leaſe is made for a Year, and ſo *de uno Anno in Annum quamdiu ambabus partibus placuerit*: Here it is a Leaſe for three Years; and after three Years, this is but a Leaſe at Will. 6 *Rep.* 36. *a.* *Plowd.* 273. *Co. Litt.* 45. *b.* *Cr. Jac.* 308. 1 *Bulſt.* 215. 1 *Rol. Abr.* 851. 1 *Lev.* 46. 2 *Jones* 5.

A Leaſe for Years is two Years.

But if a Man lets his Land for Years generally, this is a good Leaſe for two Years. 6 *Rep.* 35, 36. *a.* *Bro.* Title *Leaſes*, 13.

In Commencement of Leaſes they ſhall be taken more ſtrongly againſt the Leſſor.

In the Commencement of Leaſes in Conſtruction of Law, they ſhall be taken moſt ſtrongly againſt the Leſſor, and more beneficial for the Leſſee. 6 *Rep.* 36. *a.*

A Leaſe cannot commence from the Death of another, but a Deviſe may.

A. Man poſſeſſed of a Term for a hundred Years grants ſo much of his Term as ſhall remain at the Time of his Death; this in a Grant is void for Uncertainty; for that a Grant is founded upon a Contract: But in the Caſe of a Deviſe it may be, becauſe it doth not take Effect till his Death, and then it is certain how many Years he ſhall have. *Shower's Parliament Reports* 203.

To commence after the Surrender, Forfeiture, &c. of a former Leaſe.

If a Man makes a Leaſe for Years, to commence after the Surrender, Forfeiture, * Determination, or End of a former Leaſe; here this ſecond Leaſe muſt commence and begin from the Time that the firſt of theſe Accidents happen, and not at which of them the firſt Leſſee pleaſes. 6 *Rep.* 36. *b.*

How he may forfeit his Term.

* A Man may forfeit his Term by granting a greater Eſtate than he hath, or by Levying of a Fine, or Suffering of a Recovery. *Co. Litt.* 251. *a. b.*

2. Altho' there appear to be no Certainty, yet if it be made certain, it is enough.

How it may be aſcertained.

II. Although there appear no Certainty of Years in the Leaſe, yet if by Reference to a Certainty it may be made certain, it ſufficeth: As where a Grant is made, that when he pays twenty Shillings he ſhall from that Time have the Land for twenty Years, or for ſo many Years as J. S. ſhall name; when he hath paid the twenty Shillings, or J. S. hath named the Years, it ſhall be good for all (a) that Time. Co. Litt. 45. b. 6 Co. 35. a. 1 Roll. Abr. 849. 2 Leon. 86. Godb. 25.

An incertain Leaſe may be good when reduced to a Certainty.

(a) An incertain Leaſe ſhall be good, if it can be reduced to a Certainty in the Lives of the Leſſor and Leſſee. 1 *Rep.* 155. *b.* otherwiſe it is void. 1 *Rep.* 156. *a.* 6 *Rep.* 35. *b. Plowd.* 6. *b.* 273. *b.*

There cannot be one Contingency upon another.

A Leaſe cannot depend upon a Contingency, which depends upon another Contingency. 1 *Rep.* 156. *b.*

The Day of the Delivery ſhall be incluſive.

So from the making.

Otherwiſe from the Day of the making.

The Day of the Delivery of a Leaſe ſhall be taken to be incluſive, and the ſame Day is Parcel of the Demiſe; ſo it is if it is to commence from the Making: But if it is to hold from the Day of the Date, there the Date it ſelf is excluded. 5 Rep. 2. b. Where a Leaſe is to commence from a Day to come, that Day is excluded. Mod. Ca. Law and Equity 54.

A Leaſe 1 *Maii, Habendum* from the Day of the Date, ſhall commence 2 *Maii.*

How from the Making, or Day of the Making.

A Leaſe dated 1 Maii, Habendum for twenty Years from the Date, or from the Day of the Date, it ſhall begin the ſecond of May: If it is 1 Maii, Habendum from the Making, or from henceforth, it ſhall begin upon the Day, on which it was delivered. Co. Litt. 46. b. 5 Rep. 1. a. b. Habendum from the Date, or from the Making is all one. Comb. 399.

A Leaſe for twenty Years to commence at the (b) Death (c) of J. S. is good. 2 Rep. 35. a. b. 5 Rep. 94. b.

(b) Becauſe it is certain the Lands ſhall be enjoyed for twenty Years. *Shower's Parliament Reports* 203.

A Leaſe for Years may commence *in futuro*, but not a Leaſe for Life.

(c) A Leaſe for Years may commence *in futuro*, but not a Leaſe for Life, becauſe there muſt be Livery to it. 5 *Rep.* 94. *b.*

If

A Leaſe to commence when *J. S.* ſhall be dead without Heir is void.

If a Leaſe is made to commence when J. S. ſhall be dead without Heir, this is void in Point of Creation; for it ſhall not be intended that any one ſhall die without Heir. Goodyear and Clark, 12 Car. B. R. But if it be when J. S. ſhall be dead without Iſſue Male, there it is good. Ibid. Vide 1 Mod. Rep. 52.

But without Iſſue Male is good.

A Leaſe for eighty Years, if ſhe lives ſo long, determines by her Death: To B. for ſo many Years as ſhall remain after the Death of *A.* is void, and why.

A Term is granted to A. for eighty Years, if ſhe lives ſo long; this Term determines by her Death: Then it goes further, and demiſes to B. for ſo many Years as ſhall remain after the Death of A. this Demiſe to B. is void; (a) for there cannot be a Remainder of a Term which is gone. 1 Rep. 153. b. Plo. Com. 520. b. 521. Shower's Parl. Rep. 203.

A Diverſity was taken between *tot Annis* of the eighty Years, and *durantibus tot Annis* of the Term.

(a) A Diverſity was taken by the Counſel between *tot Annis de præd. Termino* 80 *annorum*, and *durantibus tot Annis de prædicto Termino annorum*; for *de præd.* 80 *Annis* relates to the ſaid Years without any other Limitation; but *præd. Termino Annorum* refers to the ſaid Term of Years ſubject to the ſaid Limitation; ſo that from hence they would infer, that *tot Annis de præd.* 80 *Annis* was the Remainder of the Term, and ſo void; but *tot Annis de præd. Termino Annorum* was a continuing Intereſt, and an Eſtate ſhould thereupon ariſe. 1 *Rep.* 153. *b.* *Dy.* 178. *Plow. Com.* 198, 520. *b.*

A Leaſe for 21 Years, and after another Leaſe from the End thereof; the firſt Leaſe is ſurrendered, the ſecond ſhall commence preſently.

A Leaſe is made for twenty-one Years, and afterwards the Leſſor makes another Leaſe, to commence a fine & expiratione præd. Termini Annorum dimiſſi (b); and afterwards the firſt Leaſe is ſurrendered, the ſecond Leaſe ſhall commence preſently; but if it had been a fine & expiratione prædict. 21 Annorum, there altho' the firſt Leaſe was ſurrendered, the ſecond ſhould not commence; for the Term which contained the Intereſt for the one and twenty Years is determined by the Surrender, but not by the Effluxion of Time.

But had it been from the End and Expiration of twenty-one Years, otherwiſe.

To commence after the Determination of a Leaſe in Being, and there is no Leaſe in Being, it commences preſently.

(b) A Man leaſes for forty Years, *Habendum poſt dimiſſionem inde factam* to *J. N.* and *J. N.* had no Leaſe *in eſſe*; the Leaſe ſhall commence immediately from the Sealing. *Vaugh.* 73, 74, 80, 81, *&c.* 1 *Bendl. pl.* 72. 1 *And.* 3. *Dyer* 116. *pl.* 70. *Bro.* Tit. *Leaſes*, 62. *Plow.* 148. 1 *Roll. Abr.* 849. *Cr. Car.* 399. 1 *Jon.* 355. *Co. Litt.* 46. *b.* 1 *Lev.* 77. 1 *Keb.* 360. 2 *Leon.* 11. *pl.* 17. 2 *Lev.* 242. For, in the Judgment of the Law, a void Limitation of the Commencement, and no Limitation, is all one. 6 *Rep.* 36. *a.*

So that terminus Annorum includes alſo the Eſtate and Intereſt in the Land; and by a Grant of the Term the Eſtate and Intereſt for Years paſſes. 1 Rep. 153. b. 154. a.

Leaſe for twenty-one Years rendring Rent, and alſo another Leaſe the ſame Day for twenty-one Years rendring Rent; the ſecond is void.

How it is where by Indenture.

Tenant in Fee makes a Leaſe for twenty-one Years, to begin preſently, rendring Rent, and afterwards the ſame Day makes another Leaſe for twenty-one Years; this ſecond Leaſe is void to all Intents and Purpoſes, and the Leſſee ſhall never take, altho' the firſt Leaſe ſhould be ſurrendered or forfeited, Plo. Com. 432. unleſs ſuch ſecond Leaſe is by Indenture, and then it will be an Eſtoppel to the Leſſor: But if he had granted the Reverſion for twenty-one Years, in that Caſe the Leſſee ſhould have had the Rent after Attornment made. Ibid.

Where it ſhall be good for the Remainder of the Term.

But if the ſecond Leaſe had been for thirty Years, it ſhould have been good for the laſt nine Years.

A Leaſe for Life, and afterwards for Years, when the Leſſee for Years ſhall have it.

If a Man makes a Leaſe for Life, and afterwards makes a Leaſe for Years, and after the Leſſee for Life dies, the Leſſee for Years ſhall have the Land for the Reſidue of the Years. 1 Rep. 155. a. Plo. Com. 523. b.

Leaſe for eighty Years, if the Leſſee ſhall ſo long live. Another Leaſe for eighty Years, if, &c. When he ſhall have the Land.

So if a Man makes a Leaſe for eighty Years, if the Leſſee ſhall ſo long live (a); and he afterwards leaſes to another by Indenture for eighty Years, and then the firſt Leſſee dies, the ſecond Leſſee ſhall have the Land for the Reſidue of the Term. 1 Rep. 155. a.

A Man poſſeſſed of a Term of forty Years, grants to B. ſo many of the Years as ſhall be to come at the Time of his Death, this is void.

A Man poſſeſſed of a Term (b) for forty Years, grants to B. ſo many of the Years as ſhall be to come at the Time of his Death; this is void, for the (c) Incertainty. 1 Rep. 155. a. Plow. Com. 520. b.

A Leaſe for Life, Proviſo that if the Leſſee died within ſixty Years, his Executors ſhould have it for ſo many of the ſixty Years as ſhould be to come at his Death; this is but a Covenant.

A Man made a Leaſe for Life, Proviſo that if the Leſſee died within ſixty Years, his Executors ſhould have the Land for ſo many of the ſixty Years as ſhould be to come at the Time of his Death; this was adjudg'd but a Covenant, and not a Leaſe (d) for the Incertainty. 1 Rep. 155. a. Dy. 150. a.

For twenty-one Years, if *J. S.* ſhall ſo long live, or continue Parſon of B. this is good: But if it were for ſo many Years as *J. S.* ſhall live, or continue Parſon of B. here it is void.

(a) If a Man make a Leaſe for twenty-one Years, if *J. S.* ſhall ſo long live, or ſhall continue to be Parſon of *Dale* ſo long; theſe and ſuch like are good Leaſes: But if a Man makes a Leaſe for ſo many Years as *J. S.* ſhall live, or continue Parſon, *&c.* this is void. But *note*; in the Caſes made with ſuch Limitations (until a Thing is done, or ſo long as ſuch a Thing continues, *&c.*) if Livery is made, they may be good Leaſes for Life, determinable on theſe Contingents. *Plow. Com.* 27. *a. Co. Litt.* 45. *b.* 1 *Roll. Abr.* 848.

(b) *Note*, Poſſeſſed of a Term.

But *Habendum* after the Death of the Leſſor for twenty Years had been good.

(c) But if he had demiſed the Land, *Habendum* after the Death of the Leſſor, for twenty Years, it had been good. 1 *Rep.* 155. *a.* 2 *Rep.* 35, 36, *&c.*

A Licence to enjoy for a Time is good; and ſo to take the Profits.

(d) But a Licence to enjoy Land from ſuch a Time to ſuch a Time, is a good Leaſe. 1 *Mod. Rep.* 14, 15. 5 *H.* 7. 1. 1 *Leon.* 129. 3 *Bul.* 252. 1 *Sid.* 428. 2 *Keb.* 561. 2 *Lev.* 194. 3 *Keb.* 761. *Hard.* 366. And it is the ſame of a Licence to take the Profits, *&c.* which paſſeth an Intereſt. 3 *Salk.* 223.

Shall be taken moſt ſtrong againſt the Leſſor.

A Leaſe ſhall be taken moſt ſtrongly againſt the Leſſor, and take Effect as near as may be according to the Intent of the Parties. 5 *Rep.* 3. *a.*

## The Words of a Leaſe for Years.

**The Words of a Leaſe for Years.**

**The Premiſſes.**

**The Habendum.**

THIS Indenture (a) made between A. B. of the one Part, and C. D. of the other Part, Witneſſeth, that the ſaid A. B. for and in Conſideration (b) of the Rents and Covenants herein after mentioned, hath demiſed, (c) granted, ſet and to Farm letten, and doth by theſe Preſents demiſe, grant, ſet and to Farm let (d) unto the ſaid C. D. his Executors, Adminiſtrators and Aſſigns, all that Meſſuage or Tenement ſituate, lying and being in F. with all and ſingular the Appurtenances: To have and to hold the ſaid Meſſuage or Tenement, with the Appurtenances, unto the ſaid C. D. his Executors, Adminiſtrators

Indenting makes it an Indenture.

(a) If it is written, *This Indenture*, upon a Piece of Parchment which is not indented, this is not an Indenture; but a Deed Poll. 5 *Rep.* 20. *b.*

Articles may amount to a Leaſe.

Articles to have a Leaſe for a certain Term at ſo much Rent, ſhall amount to a Leaſe. *Hob.* 35. *Cro. El.* 486. *pl.* 2. *Mo. pl.* 638. 1 *Roll. Abr.* 847. 2 *Roll. Abr.* 449. *Palm.* 201.

It may be *Sans* Conſideration; but if a Conſideration of Money, how to be.

(b) It may be without Conſideration; but if there is a Conſideration of Money mentioned in it, it amounts to a Bargain and Sale. *Vide* Title *Leaſe for a Year*; and 1 *Mod. Rep.* 262, 263.

Covenant lies upon the Word *Demiſe.*

(c) If Tenant for Years is evicted, he may bring Covenant upon the Word *Demiſe*, being a Covenant in Law. 5 *Rep.* 17. *Carth.* 98.

Leſſee is not Tenant till his Entry: But Leſſor may releaſe the Rent to him.

But the Leſſee hath *Intereſſe Termini.*

The Leſſee may enter after the Leſſor's Death.

(d) The Leſſee is not Tenant for Years till his Entry, and a Releaſe made to him before Entry is not good. But the Leſſor may releaſe the Rent to the Leſſee before Entry, in reſpect of the Privity; nay, the Leſſor cannot grant away the Reverſion, for there is no Reverſion till the Leſſee's Entry: But the Leſſee hath before Entry an *Intereſſe Termini* grantable to another; and tho' the Leſſor dies before the Leſſee enters, yet he may enter afterwards; ſo if Leſſee dies, his Executor may enter. *Co. Lit.* 46. *b.* 51. *b.* 270. *a.* *Plow.* 142. *b.* 423. *a.* 5 *Co.* 124. *b.* *Cr. Jac.* 61. 2 *Mod.* 249. 1 *Vent.* 203, 204. 2 *Mod.* 251.

For and during.

Yielding and paying.

niſtrators and Aſſigns, (c) for and during and unto the full End and Term of twenty-one Years from hence next enſuing, and fully to be compleat and ended; Yielding and paying therefore yearly and every Year during the ſaid Term, unto the ſaid A. B. (f) his Heirs or Aſſigns, the yearly Rent of Five Pounds.

How the Commencement of a Leaſe is to be.

(c) If a Leaſe is made to hold from the making, or from henceforth, it ſhall begin from the Delivery. *Co. Litt.* 46. *b.* See 5 *Rep.* 1. *a.b.* 2. *a. b.* *Comb.* 339.

When to begin from the Delivery.

And if the *Habendum* is for twenty-one Years, without mentioning when it ſhall begin, it ſhall begin from the Delivery, for there the Words take Effect. *Ibid.*

Where there is an impoſſible Date.

Alſo if a Leaſe bear a Date which is impoſſible or void, it ſhall begin from the Delivery, as if it had no Date at all. *Ibid.* 1 *Mod.* 180.

When a Leaſe which is not, or a void Leaſe, is recited.

If a Man recite a Leaſe which is not, or is void, or miſrecite a Leaſe *in eſſe*, in a material Point, *Habendum* from the End of the former Leaſe, this Leaſe ſhall begin from the Delivery thereof. *Ibid.* 1 *Bendl. pl.* 72. 1 *And.* 3. *Dyer* 116. *pl.* 70. *Bro.* Tit. *Leaſes*, 62. *Plow.* 148. 1 *Roll. Abr.* 849. *Cr. Car.* 399. 1 *Jon.* 355. 1 *Lev.* 77. 1 *Keb.* 360. 2 *Leon.* 11. *pl.* 17. *Vaugh.* 73. 2 *Lev.* 242. But it is otherwiſe in the Caſe of the King. *Vide* 1 *Sid.* 460. 1 *Vent.* 83. 1 *Lev.* 234. 2 *Keb.* 322.

Leſſor cannot reſerve Rent to any but to himſelf.

Where it is a Sum in Groſs.

(f) The Leſſor cannot reſerve the Rent to any other but himſelf; neither can * it be reſerved properly as a Rent out of any incorporeal Inheritance. *Co. Litt.* 47. *a.*

Where the Reſervation is to the Leſſor and his Heirs, and where it is rendring generally.

Where a Man hath the Inheritance, the Reſervation muſt be to him and his Heirs; if it is rendering of a Rent generally during the Term, and not ſaying to whom, it ſhall go to his Heirs. *Co. Litt.* 47. *a.*

*To him and his Aſſigns* determines with his Death, unleſs *during the Term* be in.

If a Rent is reſerved to him and his Aſſigns, it ſhall determine by his Death. *Ibid.* If the Words *during the Term* be in, *econtra.* 1 *Vent.* 162. And tho' it be *Executors*, *Adminiſtrators and Aſſigns*, *during the Term*, (and not Heirs) yet the Rent ſhall paſs by the Grant of the Reverſion. 2 *Saund.* 369, 370, 371.

So to him and his Executors.

So if it is to him and his Executors, it ſhall end by his Death; becauſe the Heir hath the Reverſion to which the Rent is incident. *Co. Litt.* 47. *a.*

To him, his Executors, Adminiſtrators and Aſſigns during the Term, he deviſes the Reverſion; the Deviſee brings Covenant for the Rent, and recovered the Rent as Aſſignee.

Tenant in Fee leaſes for Years, rendring Rent to him, his Executors, Adminiſtrators and Aſſigns, during the Term †; the Leſſor deviſed the Reverſion, and the Deviſee brought Covenant for the Non-payment of the Rent.

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* But it is a Sum in Groſs, and Debt lies upon that Contract. 1 *Vent.* 98. 1 *Lev.* 308. *Raym.* 194. 2 *Saund.* 302, 303. 2 *Keb.* 688.

† The Words *during the Term* is the effectual and operative Clauſe. 1 *Ventr.* 163.

*Per Hale*. The Words *Executors and Adminiſtrators* are void; and the Words *Aſſigns during the Term* being in, which are expreſs Words, declaring the Intent, muſt govern any implied Conſtruction: It was adjudged for the Plaintiff. 1 *Vent.* 162. *Hard.* 92 *to* 95.

How to reſerve the Rent the beſt Way.

Rent reſerved to the Leſſor, and to every one to whom the Inheritance ſhall belong during the Term, this is good; but the moſt ſure Way is to reſerve the Rent yearly during the Term, and leave the Law to make the Diſtribution. 8 *Rep.* 70. *b.* 71. *a.*

The Husband may during his Life diſpoſe of his Wife's Term: So if he ſurvives her he has it; but if his Wife ſurvives, and he makes no Diſpoſition of it, it remains to her.

**Where a Man hath a Term for Years in the Right of his Wife, the Husband hath Power to diſpoſe of it at any time during his Life; and if he ſurvives his Wife, the Law gives the Term to him; but if he makes no Diſpoſition thereof, and his Wife ſurvives him, it remaineth to (a) the Wife.** Co. Litt. 46. b. Poph. 5.

Baron made a Leaſe of his Wife's Eſtate, by Leaſe to commence after his Death, he died and his Wife ſurvived, but held a good Leaſe.

(a) Where a Man, poſſeſſed of a Term in Right of his Wife, made a Leaſe thereof to commence after his Death; he died and his Wife ſurvived; and this was held a good Leaſe againſt his Wife: For the Husband during his Life might have ſold the whole Term which the Wife had in it: So alſo he might do any Part of the Term; but the Wife ſhall have ſo much of the Term as is undiſpoſed of by the Husband. *Poph.* 4, 5, 97, 145. *Co. Litt.* 46. *b.* 351. *a.* *Cr. Car.* 344. *Plow.* 418. *Cr. Eliz.* 33, 279. *Co. Litt.* 300. *Bro.* Tit. *Charge*, 111. 8 *Co.* 97.

Baron poſſeſſed of a Term in Right of his Wife for forty Years, makes a Leaſe for twenty Years, the Wife ſhall have the remaining twenty Years.

**A Man poſſeſſed of a Term in the Right of his Wife for forty Years makes a Leaſe for twenty Years, reſerving a Rent, and dies; (b) the Wife ſhall have the Reſidue of the Term, and the Husband's Executors the Rent: Becauſe it is not incident to the Reverſion; for the Wife was not Party to the Leaſe.** Co. Litt. 46. b.

The Husband cannot by his Will diſpoſe of his Wife's Term.

(b) The Husband cannot diſpoſe of his Wife's Term by his laſt Will. *Co. Litt.* 351.

Where they muſt join in a Leaſe of the Wife's Land. 32 *H.* 8. *cap.* 28.

**Where the Husband and Wife are ſeiſed of any Eſtate in Fee-ſimple, or Fee-tail, in the Right of the Wife, or jointly with the Wife, the Husband and Wife joining in a Leaſe as it is directed** per 32 H. 8. cap. 28. **ſhall be good againſt the Heirs of his Wife.** Co. Litt. 44. a.

How it is where Tenant for Life and the Remainder-Man in Fee join in a Leaſe for Years.

**If Tenant for Life, and he in Remainder in Fee make a Leaſe for Years by Indenture, rendring Rent; it is during the Life of Tenant for Life the Leaſe of Tenant for Life, and the Confirmation of him in Re-**

mainder (a), and after the Death of Tenant for Life it is the Leaſe of him in Remainder. Co. Litt. 45. a. Cro. Car. 154. Dyer 234. b. Mo. pl. 196. pl. 939. Poph. 57. 6 Co. 14.

The Rent reſerved upon a Leaſe for Years may be apportioned.

What an Apportionment is.

The Rent reſerved upon a Leaſe for Years may be apportioned (b): An Apportionment ſignifies a Diviſion or Partition of a Rent, Common, &c. Co. Litt. 147. b.

How to be made.

An Apportionment muſt be made either by the Jury at the (c) Trial upon Nil debet, 3 Rep. 24. a. or elſe the Defendant may in his pleading ſet forth the Value of the Land, and to what the Apportionment ſhall be. 1 Ventr. 276.

No Apportionment where the Leſſee redemiſes to the Leſſor at a Rent.

If the Leſſee redemiſe Part to the Leſſor, rendring Rent, there ſhall be no Apportionment; becauſe the Parties have aſcertained what Rent ſhall be allowed for that Part. Ibid.

But where no Rent is reſerved there ſhall be an Apportionment.

But where, there ſhall not be.

But where there is no Rent reſerved upon the Redemiſe, there ſhall be an Apportionment (d): Though if Part is aſſigned by a Leſſee to a Stranger, who aſſigns to the Leſſor, and the Leſſee hath reſerved no Rent, here ſhall be no Apportionment. For the Leſſor comes

How the Action to be brought.

(a) And in an Action to be brought upon this Leaſe, *viz.* during the Life of the Tenant for Life, the Declaration muſt be accordingly, *viz.* during the Life of the Tenant for Life, by a Leaſe made by Tenant for Life only; and after his Death, then upon Leaſe made by him in Remainder only. *Co. Litt.* 45. *a. Breedon*'s Caſe. 1 *Rep.* 76. *b. Dyer* 234. 5 *Cro. Eliz.* 701. *pl.* 16.

A Rent-charge cannot be apportioned.

(b) *Note*; A Rent-charge cannot be apportioned, a Rent-Service may. *Vid. Litt. ſect.* 222. 1 *Ventr.* 276. 277.

How it is where Freehold and Copyhold are let together.

(c) A Man is Tenant in Fee of one Part, and Tenant by Copy of another Part, and demiſeth both intirely to *J. S.* for Years at an intire Rent; and he afterwards ſurrenders the Copyhold to the Uſe of *A.* and his Heirs, and afterwards grants the Reverſion of the Freehold to the ſame *A.* in Fee: *J. S.* attorned, and *A.* brought Debt for Rent: And held that it lay; for that the Contract was not intire; but by the Act of the Leſſor and Aſſent of the Leſſee might be ſevered. For the Rent is incident to the Reverſion, and that is ſeverable, and ſo is the Rent. 12 *Co.* 57, 58.

How to be on the Trial.

(d) And where it comes to be tried upon *Nil debet*, if it is ſhewn that the Leſſor entered upon Part, this muſt be anſwered by proving that it was under the Leaſe of the Leſſee; and if under the Beneſit of the Stranger's Contract. 1 Ventr. 276. 2 Lev. 143. Pollex. 141. 3 Keb. 500, 505, 518, 541, 557. this ſhould not be admitted, it would ſhake Abundance of Rents, it being a frequent thing for a Leſſor to hire a Room, or other Part of the Thing demiſed for his Conveniency. 1 *Vent.* 277.

How the Law was before the Statute of Diſtreſſes for Rent. 2 *W. & M. cap.* 5.

How the Law ſtood before the Statute of Diſtreſſes, and as to what things might be diſtreined for Rent, and how the Diſtreſs ought to be demanded, ſee at large, Co. Litt. 47. a. b.

But now the Statute for ſelling of Diſtreſſes, made 2 W. & M. cap. 5. provides,

When any Goods ſhall be diſtreined for Rent due upon a Demiſe; and the Tenant or Owner of the Goods ſhall not, within five Days after the Diſtreſs taken, and Notice thereof, with the Cauſe of ſuch taking, (where to be left) replevy the ſame,

That when any Goods or Chattels ſhall be diſtreined for any Rent reſerved, and due upon any Demiſe, Leaſe, or Contract whatever (a); and the Tenant or Owner of the Goods ſo diſtreined, ſhall not within five Days next after ſuch Diſtreſs taken, and Notice thereof, with the Cauſe of ſuch Taking, left at the chief Manſion-Houſe, or other moſt notorious Place upon the * Premiſſes, charged with the Rent diſtreined for, replevy the ſame with ſufficient Security, to be given to the Sheriff according to Law, then after ſuch Diſtreſs and Notice as aforeſaid, and Expiration of five Days, the Perſon diſtreining ſhall and may, with the Sheriff or Under-Sheriff of the County, or the Conſtable of the Hundred, Pariſh or Place where ſuch † Diſtreſs ſhall be taken, (and who are thereby commanded to be aiding and aſſiſting therein) cauſe the Goods and Chattels ſo diſtreined to be appraiſed by two ſworn Appraiſers, whom ſuch Sheriff, Under-Sheriff, or Conſtable, are hereby impowered to ſwear to appraiſe the ſame truly, according to the beſt of their Underſtanding, and after ſuch Appraiſement, may lawfully ſell the Goods and Chattels ſo diſtreined, for the beſt Price that can be got for the ſame, towards Satisfaction of the Rent for which they ſhall be diſtreined, and of the Charges of ſuch Diſtreſs, Appraiſement and Sale, leaving the Overplus (if any) in the Hands of the Sheriff, Under-Sheriff, or Conſtable, for the Owner's Uſe.

the Perſon diſtreining, after Appraiſement, may ſell the Goods,

for Payment of Rent, and Charges of the Diſtreſs, Appraiſement and Sale, leaving the Overplus in the Hands of the Sheriff, &c.

* *Note* 4 *Mod.* 395. held that Notice may be given to the Tenant or Owner of the Goods at the Diſtreiner's Election.

† Where a Diſtreſs is taken in two Hundreds, they being contiguous, it is but one Diſtreſs, being at one and the ſame Time, and ought to be put into one Pound.

And by what Conſtable or Conſtables the Act may be put in Execution, ſee *Walter* and *Rumbal*, 4 *Mod.* 390. 1 *Salk.* 247. *Comb.* 336.

(a) This will not extend to a Rent-Service, &c.

## *The Landlord's Warrant to Diſtrein, is as follows.*

Landlord's Warrant to diſtrein for Rent.

**Know all Men by theſe Preſents**, That I *M. F.* of, *&c.* do hereby deſire, authoriſe and appoint *J. J.* of *&c.* to take any Perſon or Perſons to his Aſſiſtance, and enter into the Houſe of *B. A.* in *King-ſtreet*, *Weſtminſter*, and there to make a Diſtreſs of all ſuch Goods and Chattels, as are in and upon the Premiſſes, for ten Pounds, for one Quarter of a Year's Rent, due to me the ſaid *M. F.* at *Lady-Day* laſt: And after the ſaid Goods are ſo diſtreined, If the ſaid *B. A.* doth, within the Time limited in the Act of Parliament for that Purpoſe made, replevy the ſame, or pay the ſaid Rent; then and in ſuch Caſe, I do hereby authoriſe you the ſaid *J. J.* to cauſe the ſaid Goods ſo diſtreined to be appraiſed, and according to ſuch Appraiſement to make Sale thereof to ſuch Perſon and Perſons as will buy the ſame, and to diſpoſe of the Money ariſing by ſuch Sale, in ſuch Manner as by the ſaid Act is directed: And for your ſo doing this ſhall be your ſufficient Warrant. **Witneſs** my Hand and Seal this 10th Day of *May* 1696.

*Signed, Sealed,*
*and Delivered* *M. F.*

## *The Manner of Making of the Inventory of the Goods diſtreined.*

Inventory of Goods diſtreined.

An Inventory of the ſeveral Goods that were ſeiſed and diſtreined by us whoſe Names are under Written, in the Houſe of *B. A.* in *King-ſtreet*, *Weſtminſter*, by an Authority of *M. F.* to us for that Purpoſe given, for ten Pounds for one Quarter's Rent due at *Lady-day* laſt, to him the ſaid *M. F.* which Goods were ſeiſed and diſtreined the twentieth Day of this Inſtant *May*, for the Uſe of the ſaid *M. F.* for the Rent ſo due to him, as aforeſaid.

| | *l.* | *s.* | *d.* |
|---|---|---|---|
| *In the Cellar.* | | | |
| Seven Buts of Stale Beer | 19 | 19 | 6 |
| *In the Room forward.* | | | |
| A Pair of Iron Grates | 00 | 10 | 0 |
| A Table and Cheſt of Drawers, *&c.* | | | |

*Note*; The Appraiſers muſt put the Value of the Goods; and at the Bottom of the Inventory, ſay thus;

Witneſs our Hands this one and twentieth Day of *May* 1696.

Valued in all at ———— ———— 36 10 6

By us whoſe Names are under Written.

*I. D.* } Sworn Appraiſers.
*E. D.* }

*D. A.* Conſtable.

The Notice.

Mr. *B. A.*

BY the Authority of your Landlord *M. F.* I have this twentieth Day of *May* 1696. ſeiſed upon Part of your Goods in your Houſe in *King-ſtreet, Weſtminſter*, for ten Pounds for a Quarter's Rent due at *Lady-Day* laſt, and have taken an Inventory thereof, and locked the ſame up in your Room two Pair of Stairs forwards: And if you do not pay the Rent due, or replevy the Goods mentioned in the Inventory, I ſhall in five Days Time, according to the Act of Parliament, make Sale thereof; of which take Notice from

*Your Friend,*

*J. J.*

Witneſs that a Copy hereof was this Day delivered to Mrs. *D. A.* the Wife of *B. A.* by

*E. D.*

What elſe may be ſeiſed, as Sheaves of Corn, Stacks of Hay, &c.

Where to be left when diſtreined.

Not to be removed,

Alſo that it may be lawful for any Perſon having Rent in arrear, and due upon any ſuch Demiſe, Leaſe, or Contract as aforeſaid, to ſeiſe and ſecure any Sheaves, or Cocks of Corn, or Corn looſe, or in the Straw, or Hay lying or being in any Barn or Granary, or upon any Hovel, Stack, or Rick, or otherwiſe, upon any Part of the Land charged with ſuch Diſtreſs, and to lock up the ſame in the Place where the ſame ſhall be found, for or in the Nature of a Diſtreſs, until the ſame be replevied upon ſuch Security as aforeſaid; and in Default of Replevying within the Time aforeſaid, to ſell the ſame after ſuch Appraiſement made as aforeſaid: So as nevertheleſs ſuch Corn, Grain, or Hay ſo diſtreined, be not removed by the Perſon or Perſons diſtreining, to the Damage of the Owner thereof, out of the Place where the ſame ſhall be found and ſeiſed; but be kept there as impounded until the ſame ſhall be replevied, or ſold in Default of Replevying within the Time aforeſaid.

until replevied or ſold.

What Action lies on a Pound-breach.

That upon any Pound-breach or Reſcous of Goods or Chattels diſtreined for Rent, the Perſon or Perſons grieved ſhall in a Special Action upon the Caſe, for the Wrong thereby ſuſtained, recover his and their treble Damages and Coſts of Suit againſt the Offender and Offenders in any ſuch Reſcous and Pound-breach, any or either of them, or againſt the Owner or Owners of the Goods diſtreined, in Caſe the ſame is afterwards found to come to his Uſe or Poſſeſſion.

If there is no Rent due upon ſuch Diſtreſs, then there is Remedy given to the Party injured.

Provided that in Caſe any ſuch Diſtreſs and Sale as aforeſaid ſhall be made, by Virtue or Colour of this preſent Act, for Rent pretended to be arrear and due, whereas in Truth no Rent is arrear or due to the Perſon or Perſons diſtreining, or to him or them in whoſe Name or Names, or Right, ſuch Diſtreſs ſhall be taken as aforeſaid, that the Owner of ſuch Goods and Chattels diſtreined and ſold as aforeſaid, his Executors or Adminiſtrators, ſhall and may, by * Action of Treſpaſs, or upon the Caſe, to be brought againſt the Perſon or Perſons ſo diſtreining, any or either of them, his or their Executors, recover the double Value of the Goods diſtreined and ſold, together with full Coſts of Suit.

No Goods to be taken in Execution ſhall be carried off of the Premiſſes, unleſs he pays the Landlord his Rent, not exceeding a Year.

8 *Annæ Reginæ.*

By another Act made afterwards, 8 Annæ, cap. 17. It is enacted, That no Goods or Chattels, lying or being in or upon any Meſſuage, Lands, or Tenements, which are or ſhall be leaſed for Life, or Lives, Term of Years, at Will, or otherwiſe, ſhall be liable to be taken by Virtue of any Execution on any Pretence whatſoever, unleſs the Party, at whoſe Suit the ſaid Execution is ſued out, ſhall before the Removal of ſuch Goods from off the ſaid Premiſſes, by Virtue of ſuch Execution or Extent, pay to the Landlord of the ſaid Premiſſes, or his Bailiff, all ſuch Sum or Sums of Money as are or ſhall be due for Rent, for the ſaid Premiſſes, at the Time of the Taking ſuch Goods or Chattels, by Virtue of ſuch Execution: Provided the ſaid Arrears of Rent do not amount to more than one Year's Rent; and in caſe the ſaid Arrears ſhall exceed one Year's Rent, then the ſaid Party, at whoſe Suit ſuch Execution is ſued out, paying the ſaid Landlord, or his Bailiff, one Year's Rent, may proceed to execute his Judgment, as he might have done before the ſaid Act: And the Sheriff or other Officer is thereby impowered and required to levy and pay to the Plaintiff, as well the Money ſo paid for Rent, as the Execution-Money.

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* In *Mich.* 5 *W.* & *M.* B.R. An Action was brought on this Clauſe: And after Judgment by *Nil dicit*, ſeveral Matters were moved in Arreſt of Judgment upon the Declaration, but were over-ruled by the Court; and the Plaintiff had his Judgment. 4 *Mod* 232. See the Declaration and Objections to it, 231, 232.

The Sheriff to levy the Debt, and the Rent.

Where Goods may be diſtreined for Rent off of the Premiſſes.

And it is further enacted, That in Caſe any Leſſee for Life or Lives, Term of Years, at Will, or otherwiſe, of any Meſſuages, Lands, &c. upon the Demiſe whereof any Rents are reſerved or made payable, ſhall fraudulently convey or carry off his Goods off or from the demiſed Premiſſes, to prevent the Leſſor from diſtreining for Rent reſerved; it ſhall and may be lawful for the Leſſor, or any Perſon by him impowered, within five Days next enſuing ſuch conveying or carrying off ſuch Goods, &c. to take and ſeiſe ſuch Goods, &c. whereever the ſame ſhall be found, as a Diſtreſs for the Arrears of ſuch Rent, and the ſame to ſell, or otherwiſe to diſpoſe of in ſuch Manner as if the ſaid Goods, &c. had been actually diſtreined by the Leſſor, upon the Premiſſes, for ſuch Arrears of Rent.

Proviſo not to extend to a Sale of Goods *bona fide* before Seizure.

Proviſo that nothing in the Act ſhall extend to impower ſuch Leſſor to take or ſeiſe any Goods, &c. as a Diſtreſs for Rent, which ſhall be ſold bona fide, and for a valuable Conſideration, before ſuch Seizure made.

Debt lies againſt Tenant for Life for Rent.

And alſo that it may be lawful for any Perſons having any Rent in Arrear, or due upon any Leaſe for Life, * to bring an Action of Debt for ſuch Arrears of Rent, in the ſame manner as they might have done, in caſe ſuch Rent were reſerved upon a Leaſe for Years.

* *Note*; Before this Act there was no Remedy for the Recovery of Rent due by Leſſee for Life, but only a Diſtreſs, no Action of Debt did lie.

All ſuch Diſtreſſes to be liable to the ſame Directions as Diſtreſſes by 2 *W. & M. cap.* 5.

And that all Diſtreſſes thereby impowered to be made, ſhall be liable to ſuch Sales, and in ſuch manner, and the Money ariſing by ſuch Sale to be diſtributed in like manner, as by the aforeſaid Act of 2 W. & M. ſeſſ. 1. cap. 5. is directed and appointed.

How and where Rent ſhall be diſtreined for on a Leaſe determined.

And it is thereby further enacted, That it ſhall be lawful for any Perſon, having any Rent in Arrear, or due upon any Leaſe for Life or Lives, or for Years, or at Will, ended or determined, to diſtrain for ſuch Arrears, after the Determination of the ſaid Leaſes, in the ſame manner as they might have done, if ſuch Leaſe had not been ended.

Diſtreſs to be within ſix Calendar Months during the Landlord's Title and Tenant's Poſſeſſion.

Provided that ſuch Diſtreſs be made within ſix Kalendar Months after the Determination of ſuch Leaſe, during the Continuance of ſuch Landlord's Title or

Intereſt, and during the Poſſeſſion of the Tenant, from whom ſuch Arrears became due.

Not to extend to the Queen.

Proviſo the ſaid Act ſhall not extend to hinder or prejudice Her Majeſty in the levying, recovering, or ſeiſing any Debts, Fines, Penalties, or Forfeitures, in the ſame manner as if the ſaid Act had never been made. 8 Annæ Reginæ.

Tenants holding over Lands after the End of their Terms, to pay double yearly Value. 4 *Geo.* 2.

By the Statute 4 Geo. 2, cap. 28. it is enacted, That in caſe any Tenant for Life, or Years, or Perſons under them, ſhall hold over any Lands or Tenements after the Determination of their Terms, and after Demand, and Notice given to deliver up the Poſſeſſion, ſuch Tenants ſhall pay double the yearly Value to their Landlords, or the Perſons intitled in Remainder or Reverſion, to be recovered by Action of Debt.

On Half a Year's Rent in Arrear, the Landlord may ſerve a Declaration in Ejectment, and recover Judgment.

And it is enacted, That, as often as one half Year's Rent ſhall be in Arrear, and the Landlord to whom due hath Right by Law to Re-enter for Non-payment, ſuch Landlord may, without any formal Demand or Re-entry, ſerve a Declaration in Ejectment for Recovery of the Lands, &c. And making it appear by Affidavit, or Proof upon the Trial, that half a Year's Rent is due, and no ſufficient Diſtreſs was on the Premiſſes, and that the Leſſor had Power to Re-enter, he ſhall recover Judgment: And if the Tenant ſuffer Execution, without paying the Rent and Arrears, &c. or filing a Bill in Equity for Relief in ſix Months, he ſhall be barred from all Remedy, other than by Writ of Error; and the Landlord ſhall hold the Premiſſes diſcharg'd from the Tenant's Leaſe.

But the Tenant may file a Bill in Equity to be relieved; tho' not have Injunction.

And in caſe the Leſſee, or his Aſſigns, ſhall within the Time aforeſaid file a Bill in Chancery for Relief; ſuch Perſon ſhall not have any Injunction againſt the Proceedings at Law on the Ejectment, unleſs within forty Days after the Landlord's Anſwer he bring into Court ſuch Sum of Money as the Landlord or Leſſor ſhall in his Anſwer ſwear to be due, over and above all Allowances and Coſts, there to remain 'till the Hearing of the Cauſe. And where ſuch Bill is filed after Execution executed, the Landlord is to be accountable only for ſo much as he ſhall *bona fide* make of the Premiſſes from the Time of the Entry; and if it be leſs than the Rent, the Tenant ſhall pay what it falls ſhort before he is reſtored to his Poſſeſſion.

And paying Rent and Coſts ſhall hold his Leaſe.

Provided, That if the Tenant or Leſſee, before the Trial in Ejectment, pay or tender to the Landlord, &c. or pay into the Court, where the Cauſe is depending, all the Rent in Arrear, together with the Coſts, then all further Proceedings to ceaſe; and if upon a Bill in Equity the Leſſee be relieved, he ſhall hold the Premiſſes according to the Leaſe thereof made.

Rent-ſeck recover'd as Rents on Leaſes.

And by this Act all Perſons ſhall have the like Remedy by Diſtreſs, &c. for recovering Rent-ſeck, Rents of Aſſiſe, and chief Rents, as in Caſe of Rent reſerv'd upon Leaſe. 4 Geo. 2.

Landlords may diſtrain and ſell Goods fraudulently carried off the Premiſſes;

By the Statute of 11 Geo. 2. it is enacted, That in caſe any Tenant, Leſſee for Life or Lives, Years, at Will, Sufferance, or otherwiſe, of any Meſſuages, Lands, &c. upon Demiſe, or holding whereof any Rent is or ſhall be reſerved, due, or made payable, ſhall fraudulently convey away, or carry off or from ſuch Premiſſes, his, her or their Goods and Chattels, to prevent the Landlord, &c. from Diſtraining the ſame for Arrears of Rents ſo reſerved, &c. it ſhall and may be lawful to and for every ſuch Landlord, &c. or any Perſons by him for that Purpoſe lawfully impowered, within the Space of thirty Days next enſuing ſuch Conveying away, &c. of ſuch Goods, &c. as aforeſaid, to take and ſeiſe ſuch Goods where-ever the ſame ſhall be found, as a Diſtreſs for the ſaid Arrears of Rent, and the ſame to ſell, or otherwiſe diſpoſe of, in ſuch manner as if the ſaid Goods, &c. had actually been diſtrained by ſuch Landlord, &c. upon ſuch Premiſſes for ſuch Arrears of Rent.

unleſs ſold to any Perſon not Privy to the Fraud.

Provided, That no Landlord, &c. or other Perſon intitled to ſuch Arrears of Rent, ſhall ſeiſe any ſuch Goods as a Diſtreſs for the ſame, which ſhall be ſold bona Fide, and for a valuable Conſideration, before ſuch Seizure made, to any Perſon not privy to ſuch Fraud as aforeſaid.

Penalty on the ſaid Fraud, or aſſiſting thereto.

And in caſe any ſuch Tenant or Leſſee ſhall fraudulently remove his Goods, as aforeſaid; or if any Perſon ſhall wilfully aſſiſt any ſuch Tenant, &c. in ſuch fraudulent Carrying off any Part of his Goods, or in Concealing the ſame; all and every ſuch Perſon ſhall forfeit to the Landlord, &c. from whoſe Eſtate ſuch Goods were fraudulently carried off, double the Value of the Goods by him carried off, as aforeſaid, to be recovered by Action of Debt, &c.

If the Goods exceed not the Value of fifty Pounds, Landlords to have recourſe to two Juſtices:

Provided, That where the Goods ſo fraudulently carried off, &c. ſhall not exceed the Value of Fifty Pounds, it ſhall be lawful for the Landlord, his Bailiff, Servant or Agent in his behalf, to exhibit a Complaint in Writing againſt ſuch Offender before two or more Juſtices of the Peace of the ſame County, &c. reſiding near the Place whence ſuch Goods were removed,

ved, or near the Place where the ſame were found, not being intereſted in the Lands, &c. whence ſuch Goods were removed, who may ſummon the Parties concerned, examine the Fact, and all proper Witneſſes upon Oath; or, if any ſuch Witneſs be a Quaker, upon Affirmation; and in a ſummary Way determine, whether ſuch Perſon be guilty of the Offence with which he is charged; and to inquire in like manner of the Value of the Goods, &c. by him ſo fraudulently carried off, &c. and upon full Proof of the Offence, by Order under their Hands and Seals the ſaid Juſtices may and ſhall adjudge the Offender to pay double the Value of the ſaid Goods to ſuch Landlord or his Bailiff, &c. at ſuch time as the ſaid Juſtices ſhall appoint: And in caſe the Offender having Notice of ſuch Order ſhall refuſe or neglect ſo to do, may and ſhall by Warrant under their Hands and Seals levy the ſame by Diſtreſs of the Goods, &c. of the Offender; and for want of ſuch Diſtreſs may commit the Offender to the Houſe of Correction, and there to be kept to hard Labour without Bail or Mainprize for the Space of ſix Months, unleſs the Money ſo ordered to be paid, as aforeſaid, ſhall be ſooner ſatisfied.

Appeal from them to the Quarter-Seſſions.

Provided, That it ſhall be lawful for any Perſon, who thinks himſelf aggrieved by ſuch Order, to appeal to the Juſtices at their Quarter-Seſſions, &c. whoſe Determination ſhall be final.

The two Juſtices Order on ſuch Appeal not to be executed.

Provided alſo, That where the Party appealing ſhall enter into a Recognizance with ſufficient Sureties in double the Sum ſo ordered to be paid, with Condition to appear at ſuch Quarter-Seſſions, the Order of the ſaid two Juſtices ſhall not be executed againſt him in the mean Time.

Landlords may break open Houſes to ſeiſe Goods fraudulently ſecured therein;

And it is enacted, That where any Goods or Chattels fraudulently conveyed away by any Tenant, &c. his Servant, Agent or other Perſon aſſiſting therein, ſhall be put, &c. in any Houſe, Barn, &c. or Place lockt up, faſtned or otherwiſe ſecured, to prevent ſuch Goods or Chattels from being taken as a Diſtreſs for Arrears of Rent, it ſhall be lawful for the Landlord, &c. his Steward, &c. or other Perſon impowered, to take as a Diſtreſs for Rent ſuch Goods (firſt calling to his Aſſiſtance the Conſtable, &c. or other Peace-Officer of the Hundred, &c. where the ſame ſhall be ſuſpected to be concealed, who are hereby required to aid and aſſiſt therein; and in caſe of a Dwelling-Houſe, Oath being alſo firſt made before ſome Juſtice of the Peace, of a reaſonable Ground to ſuſpect that ſuch Goods or Chattels are therein) in the Day-time to break open and enter into ſuch Houſe, Barn, &c. and to take and ſeiſe ſuch Goods and Chattels for the ſaid Arrears of Rent, as he might have done by Virtue of this or any former Act, if ſuch Goods and Chattels had been put in any open Field.

and may diſtrain Stock or Cattle on the Premiſſes for Arrears of Rent.

And it is further enacted, That it ſhall be lawful for every Landlord, his Steward, &c. or other Perſon impowered by him, to take as a Diſtreſs for Arrears of Rent any Cattle or Stock of his Tenant feeding upon any Common appendant or appurtenant, or any Ways belonging to the Premiſſes demiſed; and alſo to take all Sorts of Corn and Graſs, Hops, Roots, &c. or other Product whatſoever which ſhall be growing on any Part of the Eſtates ſo demiſed, as a Diſtreſs for Arrears of Rent, and the ſame to cut, gather, &c. and lay up when ripe in the Barn, or other Place on the Premiſſes ſo demiſed; and in caſe there ſhall be no Barn or proper Place on the Premiſſes, then in any other Barn or proper Place which ſuch Landlord, &c. ſhall hire, or otherwiſe procure for that Purpoſe, and as near as may be to the Premiſſes, and in convenient Time to appraiſe, ſell, or otherwiſe diſpoſe of the ſame, towards Satisfaction of the Rent for which ſuch Diſtreſs ſhall have been taken, and of the Charges of ſuch Diſtreſs, Appraiſement and Sale, and in the ſame manner as other Goods and Chattels may be ſeiſed, diſtrained and diſpoſed of: And the Appraiſement thereof to be taken when cut, gathered, &c. and not before.

Tenants to have Notice of the Place where the Diſtreſs is lodged.

Diſtreſs of Corn, &c. to ceaſe, if Rent be paid before it be cut.

Provided, That Notice of the Place, where the Goods and Chattels ſo diſtrained ſhall be lodged, ſhall, within one Week after the Lodging thereof in ſuch Place, be given to ſuch Tenant, or left at the laſt Place of his Abode: And that if after any Diſtreſs for Arrears of Rent ſo taken of Corn, Graſs, &c. or other Product which ſhall be growing as aforeſaid, and at any Time before the ſame ſhall be ripe and cut, &c. the Tenant, his Executors, Adminiſtrators or Aſſigns, ſhall pay to the Landlord for whom ſuch Diſtreſs ſhall be taken, or to the Steward, or other Perſon uſually employed to receive the Rents of ſuch Landlord, &c. the whole Rent which ſhall be then in Arrear, together with the full Coſt and Charges of making ſuch Diſtreſs, and which ſhall have been occaſioned thereby; that then, and upon ſuch Payment, or lawful Tender thereof actually made, whereby the End of ſuch Diſtreſs will be fully anſwered, the ſame, and every Part thereof ſhall ceaſe, and the Corn, Graſs, &c. ſo diſtrained, ſhall be delivered up to the Tenant, his Executors, &c.

Diſtreſſes may be ſecured and ſold on the Premiſſes.

And it is enacted, That it ſhall be lawful for any Perſon, lawfully taking any Diſtreſs for any kind of Rent, to impound, or otherwiſe ſecure the Diſtreſs ſo made, of what Nature or Kind ſoever it may be, in ſuch Place, or on ſuch Part of the Premiſſes chargeable with the Rent, as ſhall be moſt fit for the Impounding ſuch Diſtreſs, and to Appraiſe and Diſpoſe of the ſame upon the Premiſſes, in like Manner as any Perſon taking a Diſtreſs for Rent may now do off the Premiſſes, by Virtue of an Act in the Second Year of William and Mary, and one other Act in the Fourth Year of his preſent Majeſty; And that it ſhall be lawful for any Perſon to come and go to and from ſuch Place, where any Diſtreſs for Rent ſhall be impounded as aforeſaid, in order to View, Appraiſe and Buy, and alſo in order to carry off the ſame on Account of the Purchaſer thereof; and that if any Pound-Breach or Reſcous ſhall be made of any Goods or Stock diſtrained for Rent and impounded, or otherwiſe ſecured by Virtue of this Act, the Perſon aggrieved thereby ſhall have the like Remedy as in Caſes of Pound-Breach or Reſcous is given by the ſaid Statute.

Attornment of Eſtates by Tenants void.

Exceptions.

And it is enacted, That all Attornments of any Tenant of any Meſſuages, Lands, &c. ſhall be abſolutely void, and the Poſſeſſion of the Landlord, &c. ſhall not be deemed to be changed, &c. by any ſuch Attornment: Provided, That nothing herein contained ſhall extend to vacate any Attornment made purſuant to ſome Judgment at Law, or Decree or Order of a Court of Equity, or made with the Privity of the Landlord, or to any Mortgagee after the Mortgage is forfeited.

Againſt Tenants ſecreting Ejectments.

And it is further enacted, That every Tenant, to whom any Declaration in Ejectment ſhall be delivered for any Lands, Tenements, &c. ſhall forthwith give Notice thereof to his Landlord or his Bailiff, &c. under Penalty of forfeiting the Value of Three Years Improved or Rack-Rent of the Premiſſes demiſed, or in Poſſeſſion of ſuch Tenant, to the Perſon of whom he holds, to be recovered by Action of Debt, &c.

Landlord impower'd to make himſelf Defendant by joining with the Tenant.

And it is further enacted, That it ſhall be lawful for the Court, where ſuch Ejectment ſhall be brought, to ſuffer the Landlord to make himſelf Defendant, by joining with the Tenant to whom ſuch Declaration in Ejectment ſhall be delivered, in caſe he ſhall appear;

but in caſe ſuch Tenant ſhall refuſe or neglect to appear, Judgment ſhall be ſigned againſt the Caſual Ejector for want of ſuch Appearance; but if the Landlord of any Part of the Lands, Tenements, &c. for which ſuch Ejectment was brought, ſhall deſire to appear by himſelf, and conſent to enter into the like Rule, that by the Courſe of the Court the Tenant in Poſſeſſion in caſe he had appeared ought to have done, then the Court where ſuch Ejectment ſhall be brought ſhall permit the Landlord ſo to do, and order a Stay of Execution upon ſuch Judgment.

Rents how to be recovered, where the Demiſes are not by Deed.

And it is further enacted, That it ſhall be lawful for the Landlord, where the Agreement is not by Deed, to recover a reaſonable Satisfaction for the Lands, Tenements, &c. held by the Defendant in an Action on the Caſe, for the Uſe and Occupation of what was ſo held; and if in Evidence on the Trial of ſuch Action any parol Demiſe or Agreement (not being by Deed) whereon a certain Rent was reſerved ſhall appear, the Plaintiff ſhall not therefore be Nonſuited, but make Uſe thereof as Evidence of the Quantum of the Damages to be recovered.

Rents recoverable from Under-tenants, and apportioned, where Tenants for Life die before the Leaſe is expired.

And it is enacted, Where any Tenant for Life ſhall happen to die before or on the Day, on which any Rent was reſerved or made payable upon any Demiſe of any Lands, Tenements, &c. which determined on the Death of ſuch Tenant for Life, that the Executors or Adminiſtrators of ſuch Tenant for Life ſhall in an Action on the Caſe recover of the Under-Tenant of ſuch Lands, Tenements, &c. if ſuch Tenant for Life die on the Day on which the ſame was made payable, the Whole; or if before ſuch Day, then a Proportion of ſuch Rent, according to the Time ſuch Tenant for Life lived of the laſt Year, or Quarter of a Year, or other Time in which the ſaid Rent was growing due, making all juſt Allowances, or a proportionable Part thereof reſpectively.

Proviſion for Landlords where Tenants deſert the Premiſſes.

And it is further enacted, That if any Tenant holding any Lands, Tenements, &c. at a Rack-Rent, or where the Rent reſerved ſhall be full Three Fourths of the yearly Value of the demiſed Premiſſes, who ſhall be in Arrear for one Year's Rent, ſhall deſert the demiſed Premiſſes, and leave the ſame uncultivated or unoccupied, ſo as no ſufficient Diſtreſs can be had to countervail the Arrears of the Rent, it ſhall be lawful for two or more Juſtices of the Peace of the County, &c. (having no Intereſt in the demiſed Premiſes) at the Requeſt of the Landlord, &c. or his Bailiff, &c. to go upon and view the ſame, and to affix on the moſt notorious Part of the Premiſſes Notice in Writing what Day (at the Diſtance of fourteen Days at leaſt) they will return to take a ſecond View thereof; and if upon ſuch ſecond View the Tenant or ſome Perſon on his Behalf ſhall not appear and pay the Rent in Arrear, or there ſhall not be ſufficient Diſtreſs upon the Premiſſes, then the ſaid Juſtices may put the Landlord, &c. into the Poſſeſſion of the ſaid demiſed Premiſſes, and the Leaſe thereof to ſuch Tenant, as to any Demiſe therein contained only, ſhall from thenceforth become void.

Tenants may appeal from the Juſtices.

Provided, That ſuch Proceedings of the Juſtices ſhall be examinable into in a ſummary Way by the next Juſtices of Aſſiſe of the reſpective Counties in which ſuch Lands or Premiſſes lie; and if they lie in the City of London or County of Middleſex, by the Judges of the King's Bench or Common Pleas; and if in the Counties Palatine of Cheſter or Durham, then before Judges thereof; and if in Wales, then before the Courts of Grand Seſſions reſpectively who are hereby impowered to order Reſtitution to ſuch Tenant, together with his Coſts, to be paid by the Landlord, &c. if they ſhall ſee Cauſe; and in caſe they ſhall affirm the Act of the Juſtices, to award Coſts not exceeding five Pounds, for the frivolous Appeal.

Tenants holding Premiſſes after the Time they notify for quitting them, to pay double Rent from ſuch Time.

And it is further enacted, In caſe any Tenant (who hath Power to determine his Leaſe upon Notice) ſhall give Notice of his Intention to quit the Premiſſes by him holden, at a Time mentioned in ſuch Notice, and ſhall not accordingly deliver up the Poſſeſſion thereof at the Time in ſuch Notice contained, that then the ſaid Tenant, &c. his Executors or Adminiſtrators, ſhall from thenceforth pay to the Landlord, &c. double the Rent which he ſhould have otherwiſe paid, to be levied and recovered at the ſame Times, and in the ſame Manner, as the ſingle Rent, before the giving ſuch Notice, could be levied or recovered; and ſuch double Rent ſhall continue to be paid during all the Time ſuch Tenant ſhall continue in Poſſeſſion, as aforeſaid.

Diſtreſſes for Rent not unlawful, &c. for any Irregularity in the Diſpoſition of them.

And it is enacted, That where any Diſtreſs ſhall be made for any Kind of Rent juſtly due, and any Irregularity, or unlawful Act ſhall be afterwards done by the Parties diſtraining, or their Agents, the Diſtreſs itſelf ſhall not be deemed to be unlawful, nor the Parties making it be deemed Treſpaſſers ab initio; but the Parties aggrieved by ſuch unlawful Act or Irregularity ſhall recover full Satiſfaction for the ſpecial Damages they ſhall have ſuſtained thereby, and no more, in an Action of Treſpaſs on the Caſe, at the Election of the Plaintiffs; Provided, That where the Plaintiffs ſhall recover in ſuch an Action they ſhall be paid their full Coſts, and have the like Remedies for the ſame as in other Caſes of Coſts.

Nor Tenants to recover by Action on Tender of Amends.

Provided, That no Tenant, &c. ſhall recover in any Action for any ſuch unlawful Act or Irregularity, if Tender of Amends hath been made by the Parties diſtraining, or their Agents, before ſuch Action brought.

In Actions againſt Perſons intitled to Rents, the Defendants may plead the general Iſſue.

And it is further enacted, That in all Actions of Treſpaſs, or upon the Caſe, to be brought againſt any Perſons intitled to Rents or Services of any Kind, their Bailiffs, &c. or other Perſons, relating to any Entry, by Virtue of this Act, or otherwiſe, upon the Premiſſes chargeable with ſuch Rents or Services, or to any Diſtreſs, &c. of any Goods or Chattels thereupon, it ſhall be lawful for the Defendants in ſuch Action to plead the general Iſſue, and give the ſpecial Matter in Evidence: And in Caſe the Plaintiffs ſhall be Nonſuit, &c. the Defendants ſhall recover double Coſts.

Defendants in Replevin to make Conuſance, that the Plaintiff held the Premiſſes at a certain Rent.

And it is further enacted, That it ſhall be lawful for all Defendants in Replevin to avow or make Conuſance generally, that the Plaintiff in Replevin, or other Tenant of the Lands and Tenements whereon ſuch Diſtreſs was made, enjoyed the ſame under a Grant or Demiſe at ſuch a certain Rent during the Time wherein the Rent diſtrained for incurred, which Rent was then and ſtill remains due, or that the Place where the Diſtreſs was taken was Parcel of ſuch certain Tenements held of ſuch Manor, &c. for which Tenements the Rent, Relief, &c. or other Services diſtrained for, was at the Time of ſuch Diſtreſs and ſtill remains due, without further ſetting forth the Grant, &c. or Title of ſuch Landlord, &c. or Owner of ſuch Manor: And if the Plaintiff ſhall become Nonſuit, &c. the Defendants in ſuch Replevin ſhall recover double Coſts.

To prevent vexatious Replevins.

And to prevent vexatious Replevins it is enacted, That all Sheriffs and other Officers having Authority to grant Replevins, ſhall in every Replevin of a Diſtreſs for Rent take in their own Names from the Plaintiff, and two reſponſible Perſons as Sureties, a Bond a Bond in double the Value of the Goods diſtrained; (ſuch Value to be aſcertained by the Oath of one or more credible Witneſs or Witneſſes not intereſted in the Goods or Diſtreſs, which Oath the Perſon granting ſuch Replevin is hereby authoriſed and required to adminiſter) and conditioned for proſecuting the Suit with Effect and without Delay; and for duly returning the Goods diſtrained, in caſe a Return ſhall be awarded, before any Deliverance be made of the Diſtreſs, and that ſuch Sheriff, &c. taking any ſuch Bond, ſhall, at the Requeſt and Coſts of the Avowant, or Perſon making Conuſance, aſſign ſuch Bond to the Avowant, &c. by indorſing the ſame, and atteſting it under his Hand and Seal, in the Preſence of two or more Witneſſes, which may be done without Stamp, provided the Aſſignment ſo indorſed be duly ſtampt, before any Action brought thereupon. And if the Bond ſo taken and aſſigned be forfeited, the Avowant, &c. may bring an Action and recover thereupon in his own Name, and the Court, &c. may by Rule give ſuch Relief upon ſuch Bond as is agreeable to Juſtice, and ſuch Rule ſhall have the Effect of a Defeazance to ſuch Bond.

How an Authority to make a Leaſe muſt be executed.

Where a Man hath Authority to make a Leaſe, or to do an Act, he muſt do it in the Name of him who gave * the Authority. 9 Rep. 76. b. Godb. 389. 1 Roll. Abr. 331. Mo. 70. pl. 191, 818. pl. 110. b.

But where Executors have Authority to ſell, they muſt do it in their own Names, becauſe he who gave the Authority is dead. *Ibid.* 9 *Rep.* 77. *a.* 1 *Roll. Abr.* 331.

How a Leaſe by Attorney is to be made.

And where Attornies have Power to make Leaſes for Years by Indenture, they muſt not make them in their own Names, but in the Name of the Perſon who gave the Authority, 9 Rep. 76. b. 77. a. and it muſt be done thus, (viz.)

The Form of a Leaſe made by Attorney.

THis Indenture made, &c. Between A. B. and C. D. † of the one Part, and E. F. of the other Part; Whereas the ſaid A. B. by a certain Writing, or Letter of Attorney, under his Hand and Seal duly executed, dated the twentieth Day of, &c. amongſt other Things therein contained, did authoriſe the ſaid C. D. in the Name ** of him the ſaid A.

* If a Man hath an Authority to leaſe for me, or to ſurrender a Copyhold for me, he muſt do it in my Name. 1 *Danv. Abr.* 699. 9 *Rep.* 77. *a.*

† *A. B.* is the Party whoſe Land it is, and *C. D.* is the Attorney.

** It muſt be made in the Name, and ſealed and ſubſcribed with the Name of the Maſter. 3 *Lev.* 140.

B. and on his Behalf, to execute Leaſes of ſuch Part of his Lands, Tenements, and Hereditaments in, &c. as by the ſaid C. D. ſhould be thought fit to be leaſed; Now this Indenture witneſſeth, that for and in Conſideration of the Sum of two Hundred Pounds of lawful Money of Great Britain, to the ſaid A. B. in Hand paid by the ſaid E. F. the Receipt, &c. he the ſaid A. B. by his ſaid Attorney, hath demiſed, leaſed, and to farm letten, and doth, &c. unto the ſaid E. F. &c. To have and to hold, &c. Yielding and paying to the ſaid A. B. his Heirs and Aſſigns, &c. And the ſaid E. F. covenants with the ſaid A. B. his Heirs and Aſſigns, to pay the Rent, &c. And the ſaid A. B. by his ſaid Attorney, for himſelf, his Heirs, Executors and Adminiſtrators, doth covenant, &c. to and with the ſaid E. F. &c. See 3 Lev. 138, 139, 140.

# Uſes.

*Per Manwood* Juſtice.

The Antiquity of Uſes.

A Deſcription of Uſes, and the Original of them, per Manwood Juſtice.

The Commencement of Uſes hath been as long as Mankind hath been guided by Reaſon; and although no Mention is made of Uſes in our antient Books, yet that is no Argument that Uſes have been but of late Times: That Uſes were not common, therefore were not at all, is a Non ſequitur.

As long as Wills and Marriages have been, Truſts and Confidences have been.

As long as Wills have been, Truſts and Confidences have been; and alſo as long as Marriage hath been, [See the Writ of Cauſa matrimonii prolocuti, and the Statute of Marl. chap. 6.] there is no Mention of falſa Feoffamenta; and by other Words of the ſaid Statute there was a Truſt, but it was a falſe Truſt to deceive another: And therefore ſuch a miſhapen Truſt is not called a Truſt by the ſaid Statute, but a Colluſion; and Mr. Littleton ſaith, That the Ceſtuy que Uſe ſhall be ſworn upon Enqueſts, which was not enacted by any Statute, but practiſed and put in Uſe by the Common Law. And I have ſeen divers ancient Deeds of Uſes, and in ancient Time you ſhall not find that any Man would purchaſe Land to himſelf alone, but had two or three Joint Feoffees with him; and he who was firſt named in the Charter of Feoffment was Ceſtuy que Uſe; although no Uſe was declared unto him upon the Livery; and ſo the Uſe was known by the Occupation of the Lands. And the Reaſon why no Mention is made in our ancient Books of Uſes, is becauſe Men were then of better Conſciences than now they are; ſo as the Feoffees did not give occaſion to the Feoffors to bring Subpœna's out of Chancery to compel them to perform the Truſts repoſed in them.

*Ceſtuy que Uſe* was to be ſworn on Enqueſts by the Common Law.

Formerly none purchaſed Land to himſelf alone, but with other joint Feoffees.

And the Uſe was known by the Occupation.

As to what hath been ſaid, That Uſes have taken their Beginning after the Statute of Weſtm. 3. For before the ſaid Statute, if a Man had made a Feoffment in Fee, without declaring any Uſe, it ſhould have

Before the Statute of *Marlbridge*, a Feoffment in Fee made without any Uſe declared, was to the Uſe of the Feoffee.

have been to the Uſe of the Feoffee; becauſe there is a ſufficient Conſideration betwixt the Feoffor and Feoffee to raiſe a Uſe, (viz. The Seigniory created by the Law betwixt them.) Now by the ſaid Statute ſuch Conſideration is taken away; and then upon ſuch Feoffment, without Conſideration or Declaration of Uſes, it is to the Uſe of the Feoffor himſelf.

*Harper* Juſt. ſays, that Uſes began about 18 *Ed.* 2.

And came in common Practice in H. 6.

And after became miſchievous.

Harper Juſtice: Uſes began about 18 Ed. 2. after which Time there was ſuch a general Liking of them, that they were uſed a-new; but they did not come into common Practice before the Time of King H. 6. when the great Contention fell out betwixt the two Houſes of York and Lancaſter, at which Time Uſes were in great Eſtimation for the Safety of Inheritances: Afterwards Uſes by Practice became miſchievous and prejudicial to the Publick Juſtice of the Realm, and to many particular Perſons: For ſome, timentes implacitari, conveyed their Lands ſecretly to Uſes, ſo as he who had Right knew not againſt whom to bring his Action; and for that divers Statutes have been made to enable the Subject to implead the Pernor of the Profits. 4 H. cap. 7. 11 H. 6. cap. 4. 1 H. 7. cap. 1.

The Reaſon why the 27 *H.* 8. *cap.* 10. was made.

And as to the making of the Statute of 27 H. 8. cap. 10. the Truth is, that the King was diſpleaſed at the Loſs of Wardſhips, and other Injuries done to him, for which Cauſe he complained to the Judges of the Weſen of the Law in that Caſe, who thereupon ſhewed unto the King the Cauſes of thoſe Injuries and Loſſes to the King; and further ſhewed to the King, that if the Poſſeſſion might be joined to the Uſe, all would go well, and all the Injuries, Wrong and Loſs which came to the King by Reaſon of Uſes, Wills, and ſecret Feoffments, would be avoided; for which Reaſons the King commanded his Council to frame a Bill to that Purpoſe, and preſent it to the Houſe of Commons in the twenty-fourth Year of his Reign: But it was then rejected; and the King at that Time would have been contented, that the fourth Part of the Land only ſhould deſcend; and from that Time the King ſtayed further Proceedings in the ſaid Cauſe until the 27 H. 8. at which Time it took Effect; and their Care was to pen the Statute ſo preciſely, that nothing ſhould be left in the Feoffees, but that the whole Eſtate ſhould be executed by the Statute, ſo as the ſaid Statute did utterly take away all from the Feoffees.

Whereas it hath been ſaid, that a Uſe hath been as long as any Marriage hath been, and ſo conceived

upon

# Uſes.

*Per Manwood* Juſtice.

The Antiquity of Uſes.

A Deſcription of Uſes, and the Original of them, per Manwood Juſtice.

The Commencement of Uſes hath been as long as Mankind hath been guided by Reaſon; and although no Mention is made of Uſes in our antient Books, yet that is no Argument that Uſes have been but of late Times: That Uſes were not common, therefore were not at all, is a Non ſequitur.

As long as Wills and Marriages have been, Truſts and Confidences have been.

As long as Wills have been, Truſts and Confidences have been; and alſo as long as Marriage hath been, [See the Writ of Cauſa matrimonii prolocuti, and the Statute of Marl. chap. 6.] there is no Mention of falſa Feoffamenta; and by other Words of the ſaid Statute there was a Truſt, but it was a falſe Truſt to deceive another: And therefore ſuch a miſhapen Truſt is not called a Truſt by the ſaid Statute, but a Colluſion; and Mr. Littleton ſaith, That the Ceſtuy que Uſe ſhall be ſworn upon Enqueſts, which was not enacted by any Statute, but practiſed and put in Uſe by the Common Law. And I have ſeen divers ancient Deeds of Uſes, and in ancient Time you ſhall not find that any Man would purchaſe Land to himſelf alone, but had two or three Joint Feoffees with him; and he who was firſt named in the Charter of Feoffment was Ceſtuy que Uſe; although no Uſe was declared unto him upon the Livery; and ſo the Uſe was known by the Occupation of the Lands. And the Reaſon why no Mention is made in our ancient Books of Uſes, is becauſe Men were then of better Conſciences than now they are; ſo as the Feoffees did not give occaſion to the Feoffors to bring Subpœna's out of Chancery to compel them to perform the Truſts repoſed in them.

*Ceſtuy que Uſe* was to be ſworn on Enqueſts by the Common Law.

Formerly none purchaſed Land to himſelf alone, but with other joint Feoffees.

And the Uſe was known by the Occupation.

Before the Statute of *Marlbridge*, a Feoffment in Fee made without any Uſe declared, was to the Uſe of the Feoffee.

As to what hath been ſaid, That Uſes have taken their Beginning after the Statute of Weſtm. 3. For before the ſaid Statute, if a Man had made a Feoffment in Fee, without declaring any Uſe, it ſhould have been to the Uſe of the Feoffee; becauſe there is a ſufficient Conſideration betwixt the Feoffor and Feoffee to raiſe a Uſe, (viz. The Seigniory created by the Law betwixt them.) Now by the ſaid Statute ſuch Conſideration is taken away; and then upon ſuch Feoffment, without Conſideration or Declaration of Uſes, it is to the Uſe of the Feoffor himſelf.

*Harper* Juſt. ſays, that Uſes began about 18 *Ed.* 2.

And came in common Practice in H. 6.

And after became miſchievous.

Harper Juſtice: Uſes began about 18 Ed. 2. after which Time there was ſuch a general Liking of them, that they were uſed a-new; but they did not come into common Practice before the Time of King H. 6. when the great Contention fell out betwixt the two Houſes of York and Lancaſter, at which Time Uſes were in great Eſtimation for the Safety of Inheritances: Afterwards Uſes by Practice became miſchievous and prejudicial to the Publick Juſtice of the Realm, and to many particular Perſons: For ſome, timentes implacitari, conveyed their Lands ſecretly to Uſes, ſo as he who had Right knew not againſt whom to bring his Action; and for that divers Statutes have been made to enable the Subject to implead the Pernor of the Profits. 4 H. cap. 7. 11 H. 6. cap. 4. 1 H. 7. cap. 1.

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Whereas it hath been ſaid, that a Uſe hath been as long as any Marriage hath been, and ſo conceived upon the Writ de cauſa Matrimonii prolocuti; the ſame is not any Reaſon: For in that Caſe there is not any Confidence or Truſt; for if the Marriage doth not take Effect, the Woman ſhall have her Writ de cauſa Matrimonii prolocuti. In Conveyances we are to reſpect two Things, the Form and Effect of them; and in all Caſes, where the Form and Effect cannot ſtand together, the Form ſhall be rejected, and the Effect ſhall ſtand.

*Dyer*, That Uſes began preſently after the Statute of *Mortmain*,

7 *Ed.* 1.

15 *R.* 2. *cap.* 5. The firſt Time *Behoof* and *Uſe* are uſed in our Law, tho' long before in Practice.

*Ceſtuy que Uſe* might juſtify maintaining their Feoffees.

An Uſe cannot be limited to Pariſhioners no more than Land can.

27 *H.* 8. doth deveſt all out of the Feoffees, but not before the Uſe is veſted.

Dyer Chief Juſtice: As to the Beginning of Uſes, the ſame was immediately after the Statute of Mortmain, at which Time all their Shifts then in Practice were found out, for which ſee the Statute of Mortmain, 7 Ed. 1. Stat. de Religioſis: For which Cauſe they were after driven to find out other Shifts not provided for by the Statute, which were eſpy'd by the making of the Statute 15 R. 2. ch. 5. And in that Statute the Words Behoof and Uſe are uſed, which is the firſt Place thoſe Words have been uſed in our Law; and yet a long Time before that Statute Uſes had been in Practice: Now Uſes by Tract of Time have grown into Credit, ſo as Ceſtuys que Uſe have been ſworn in Inqueſts: And by the Law they might juſtify the maintaining of their Feoffees when they had been impleaded, which they could not have done, if they had not had more Intereſt in the Land than Strangers: And Uſes have been in ſuch Reckoning and Account ſince that Time, that an Uſe hath obtained the Name of an Inheritance, and is now reputed amongſt the Eſtates of Lands in our Law; and therefore we ſay in Speeches and penning of Statutes, Eſtates in Poſſeſſion and Eſtates in Uſe: And a Uſe cannot be limited to Pariſhioners, no more than the Land it ſelf; ſo as there is a great Affinity betwixt the Words Lands and Uſe. It is to be granted, that the Statute of 27 H. 8. cap. 10. doth deveſt all out of the Feoffees: Yet it doth not deveſt it before that the Uſe is veſted in Ceſtuy que Uſe; for the Words of the Statute are, That the Poſſeſſion ſhall be executed in ſuch Manner, Quality and Degree as was the Uſe; therefore the veſting of the Uſe ought to precede the Execution of the Poſſeſſion to it. Brent's Caſe, 2 Leon. Caſe 25. fol. 17, 18.

So far I have gone with the Deſcription of Uſes from the firſt Beginning of them; now I ſhall go on with the Deſcription of them in the after or modern Times. And firſt, An Uſe, *quid.*

**An Uſe** (a) **is a Truſt or Confidence repoſed in ſome other** (b), Lutw. 824. **which is not iſſuing out of the Land, but as a Thing collateral annexed in Privity to the Eſtate of the Land, and to the Perſon touching the Land;** (ſcilicet) **that** Ceſtuy que Uſe **ſhall take the Profits, and that the Tertenant ſhall make an Eſtate according to his Direction; ſo that** Ceſtuy que Uſe **had neither** jus in re, **nor** jus ad rem, **but only a Confidence and Truſt, for which he had no Remedy by the Common Law: But, for the Breach of Truſt, his**

*Ceſtui que Uſe* had neither *jus in re*, nor *jus ad rem*, nor Remedy at the Common Law.

Ought to take care Truſts be not carried on beyond the Bounds of Uſes.

(a) As to the Difference between Uſes and Truſts, there ought to be the utmoſt Care not to let Truſts be carried on beyond the Bounds of Uſes; for it will introduce different Rules, which will make great Confuſion, and be miſchievous to the Publick: And Perpetuities in Truſts will have all the Inconveniences as Perpetuities in Eſtates in Law have. *Mich.* 9 *W. inter Lloyd* and *Carew.*

Perpetuities in Truſts are as inconvenient as in other Eſtates.

Lands conveyed to Uſes, Queſtions thereon ariſing muſt be decided by the Judges.

Lands and Tenements conveyed upon Confidences, Uſes and Truſts, are to be ruled and decided (if a Queſtion ariſes upon the Confidences, Uſes or Truſts,) by the Judges of the Law. *Co. Litt.* 271. *b. Carter* 197. *Raym.* 317. *Vide poſtea.*

The Intention of the Parties to be obſerved in the Creation of Uſes, but when created, to be governed by the Rules of Law.

The Intention of the Parties ſhall be obſerved in the Creation of Uſes; but when they are created, they ſhall be governed by the Rules of Law. *Lutw.* 824.

How Uſes are now to be conſtrued.

When Settlements to Uſes came to be very common, divers Inconveniencies were introduced; for preventing whereof the Statute 27 *H.* 8. *cap.* 10. was made, by which the Uſe is united to the Poſſeſſion; and as before that Statute, Uſes were to be executed according to the Rules of Equity, ſo now they are reduced to the Common Law, and are to be conſtrued according to the Rules of Law. *Per North*, Chief Juſtice. 2 *Mod. Rep.* 251.

(b) To be guided by the Intention of the Parties. *Poph.* 2, 72, 73.

Before the Statute of Uſes, no Uſes could ariſe on a Feoffment to Uſes without Livery.

Before the Statute of Uſes, if a Feoffment had been made to Uſes, and no Livery given, the Uſes could never have riſen: So likewiſe if a Reverſion had been granted to Uſes, and no Attornment, no Uſe could ariſe; becauſe there was no ſufficient Eſtate in Poſſeſſion whereupon the Uſe could ariſe. *Vaugh.* 49.

A Uſe not to be greater than the Eſtate.

An Uſe ſhall not be greater than the Eſtate out of which it is derived. *Carter* 46, 209.

An Uſe cannot be raiſed out of a Poſſibility.

An Uſe cannot be raiſed out of a Poſſibility, but ſomething which is *in eſſe.* *Carter* 46. *Cro. El.* 895. *pl.* 15. *Carter* 48.

But in Chancery.

**his Remedy was only by** Subpœna **in** (a) **Chancery.** Co. Litt. 272. b.

But now 27 *H.* 8. *cap.* 10. transfers the Poſſeſſion to the Uſe.

**But now the Statute of Uſes** 27 H. 8. cap. 10. **hath transferred the Poſſeſſion to the Uſe.** Co. Litt. 272. b. Plow. Com. 352. b. and 349. b. 1 Rep. 121. a. b. 122, 127. 2 Rep. 58, 78. 6 Rep. 64. 7 Rep. 34. 1 Leon. 196. 2 Leon. **Caſe** 25.

Nor out of a Uſe, Way or Common.

An Uſe cannot riſe out of a Uſe, or a Way, or a Common newly created. *Carter* 46. *Cro. Jac.* 189, 190. *pl.* 13. *Poph.* 81.

To be limited to a Perſon capable to take.

An Uſe muſt be limited to a Perſon capable of taking: But if a Feoffment is made to the Uſe of *Salisbury Plain* for the Life of *A.* Remainder over to *B.* the firſt Uſe is void, and the ſecond Uſe in Remainder ſhall take preſently. 1 *Leon.* 196, 197.

Uſes ſhall never riſe on precedent Contingents impoſſible, or againſt Law.

Where an Eſtate in Uſe is to begin on a contingent Precedent, which is impoſſible, or againſt Law, the Uſe ſhall never riſe. 1 *Leon.* 199.

Uſes limited without Conſideration are void.

If Uſes are limited without Conſideration they are void; and the Eſtate returns to the Covenantor again, or rather was never out of him. *Vide Pibus* and *Midford*, 1 *Vent. Per Hale* alſo. 1 *Mod.* 159, 160, *&c.*

Covenant to ſtand ſeiſed: All the Uſes undiſpoſed of remain in the Covenantor.

In a Covenant to ſtand ſeiſed, all the Uſes that are not diſpoſed of return back and remain in the Covenantor; to ſerve the contingent Uſes when they ſhall happen: But in a Feoffment the Uſes there are all diſpoſed of, and muſt come out of the Feoffee's Eſtate, when the Contingency happens. *Carter* 202. 1 *Leon.* Caſe 279. fol. 197. See Title *Feoffment.*

Uſes remaining to the Feoffor, when, and when not, on a Feoffment.

And how on a Fine, *&c.*

It hath been held, that if by Feoffment, or Leaſe and Releaſe, a Man conveys any particular Eſtate to another; there the Reſidue of the Eſtate ſhall remain, by Implication, to the Uſe of the Party himſelf: But where no Eſtate or Uſe is limited to another, the whole Conveyance is to no Purpoſe *, if the Party be conſtrued to have the reſulting Uſe: And adjudg'd, that the Uſe ſhall be intended to the Releſſee, *&c.* if the contrary be not made appear. 2 *Salk.* 678. 3 *Salk.* 387. *Fарreſt.* *Rep.* 76.

* 'Tis otherwiſe on a Fine or Recovery, for they may have their Eſtates, as to barring upon Nonclaims.

Uſes were but in Equity before the Statute, and not much reſpected in Law.

(a) Uſes were Things but in Equity before the Statute, and then they were much guided by the Intentions of Parties. *Carter* 167. Altho' Uſes are not ſo much reſpected as Wills, yet the Law has great Reſpect for them. *Carter* 166, 167.

An Uſe of Land, which is but the Pernancy of the Profits, is no new Thing, but is Part of that which the Owner of the Land had. 12 *Co.* 56.

There muſt be Privity of Eſtate in him who is ſeiſed to an Uſe.

There ought to be Privity of Eſtate and Confidence in him who is ſeiſed to an Uſe. 2 *Roll. Abr.* 795.

The King, Alien, Perſon attainted, Corporation, or Tenant in Tail, cannot be ſeiſed to an Uſe.

Neither the King, nor an Alien, nor a Perſon attainted, Corporation, nor Tenant in Tail, can be ſeiſed to a Uſe. *Poph.* 72. *Carter* 176. Nor Tenant in Tail. 3 *Bulſt.* 184, 185. 1 *Roll.* 332, 333.

An Uſe may be limited, or a Rent reſerved, on a Releaſe which creates an Eſtate.

An Uſe may be limited upon a Releaſe which creates an Eſtate, or a Rent may be reſerved upon it; but on a Releaſe or Confirmation, which enures by way of *mitter le droit*, a Uſe cannot be limited, nor a Rent reſerved. 12 *Co.* 55.

Fear and Fraud were the Inventors of Uſes.

There were two Inventors of Uſes, Fear and Fraud.

Fear in the Time of Troubles and Civil Wars, for ſaving of their Eſtates from Forfeiture.

Fraud to defeat due Debts, lawful Actions, Wards, Eſcheats, Mortmain, &c. 1 Rep. 121. b. Poph. 73.

There are Uſes *in eſſe*, and

There are two Manner of Uſes,

Uſes in eſſe, in
Poſſeſſion,
Reverſion,
Remainder.

Uſes in Contingency;

Uſes in Contingency which by Poſſibility may happen in
Poſſeſſion,
Reverſion,
Remainder.

to which Confidence in the Perſon, and Privity in Eſtate, are inſeparable Incidents.

And to theſe Uſes there are two inſeparable Incidents, viz. Confidence in the Perſon, and Privity in Eſtate. 1 Rep. 121. b.

The Confidence and Privity are expreſſed or implied by Law.

And this Confidence in the Party is either expreſſed by the Parties, or implied by the Law; and ſo is Privity of Eſtate either expreſſed or implied. Ibid.

The 27 *H.* 8. was made for remedying Abuſes in Uſes.

The Act of 27 H. 8. cap. 10. of Uſes, was made for the Remedying of all Miſchiefs and Abuſes in Uſes, which Act was divided into two General Branches, viz.

The Preamble, which expreſſes the Miſchiefs,

And the Body of the Act, which provides the Remedies. 1 Rep. 123. b. See the Expoſition of this Act in Chudleigh's Caſe, from 123 to 140. in the 1 Rep.

The Miſchiefs and Abuſes contained in the Preamble.

The Preamble of the Act contains theſe Miſchiefs following, viz.

I. By Feoffments, Fines, &c. to Uſes without Livery.

I. Whereas by the Common Law, no Lands or Tenements can paſs but by Livery, or Matter of Record, or Writing if it lie in Grant; Now by divers and ſundry Imaginations, ſubtile Inventions and Practices, by fraudulent Feoffments, Fines, Recoveries, and Aſſurances, craftily made to ſecret Uſes, Intents and

**Purpoſes (a), the Hereditaments of this Realm were conveyed from one to another without Livery.**

II. By Wills by Parol, and by Signs.

**II. By laſt Wills (b), ſometimes by Parol, and ſometimes by Signs, in great Extremity.**

(a) So that Feoffments, Fines and Recoveries are called fraudulent; becauſe they were permitted and made to fraudulent Uſes. 1 *Rep.* 123. *b.*

May deviſe Lands to one, to the Uſe of another.

(b) Lands may be deviſed to one, to the Uſe of another. 2 *Ventr.* 314. 1 *Lutw.* 823, 824.

Uſes in Contingency, not executed by the Statute, the Fee is in the Feoffor.

Where Uſes are in Contingency, and not executed by the Statute, becauſe of a Power to make Leaſes, or for the Feoffor to deviſe, there the Fee is in Feoffor in the mean time. 10 *Rep.* 85. *b.* 86.

Where a Uſe is ſaid to be in Contingency.

When it is uncertain whether an Uſe or Eſtate limited *in futuro* will ever veſt in Eſtate or Intereſt or no, there the Uſe or Eſtate is ſaid to be in Contingency: Becauſe upon a future Contingent, this may either veſt or not veſt, as the Contingency happens. 10 *Rep.* 85. *a.*

III. Heirs have been unjuſtly diſinherited.

**III. By theſe fraudulent Uſes many Heirs have been unjuſtly diſinherited.**

IV. Lords have loſt their Wards, Reliefs, *&c.*

**IV. The Lords have loſt their Wards, Reliefs, and in Effect their Seigniories.**

V. Purchaſers could not be ſafe.

**V. No Purchaſer could be aſſured of his Eſtate.**

VI. Knew not againſt whom to bring their Action.

**VI. Nor could any Man know againſt whom to bring his Action, or have his Execution.**

VII. Tenancies in Dower and by Curteſy were defeated.

**VII. Eſtates created by Law, in Conſideration of Marriage, as Tenancy in Dower and by Curteſy, were defeated.**

VIII. Perjuries were committed.

**VIII. Perjuries upon Trials of ſecret Uſes were committed, and daily increaſed.**

IX. The King loſt his Eſcheats and Purchaſes of Aliens.

**IX. The King had loſt his Eſcheats for Attainders, Purchaſes of Aliens, &c.**

X. And the Lords loſt their Eſcheats.

**X. The Lords had alſo loſt their Eſcheats.** 1 Rep. 123. b.

For remedying which Miſchiefs,

**Theſe were the Miſchiefs; then comes the Body of the Act, and provides,**

**(c) That where any Perſon ſtands and is ſeiſed * of any Lands, Tenements, &c. to any Uſe.** 1 Rep. 125. b.

* *Note*; This Statute extends to Perſons ſeiſed, not poſſeſſed of any Lands, *&c.*

every Perſon who has any Uſe,

**That in every ſuch Caſe, all and every ſuch Perſon and Perſons that have or ſhall hereafter have any ſuch Uſe, &c. ſhall from**

No Poſſeſſion is executed but where an Uſe may riſe by Common Law.

(c) The Statute doth not execute any Poſſeſſion, but where a Uſe may ariſe by the Common Law, (*i. e.*) by valuable Conſideration. *Plow. Com.* 40, 304. *a.*

Eſtates on Uſes to be of the ſame Condition as Eſtates in Poſſeſſion.

Eſtates upon Uſes executed by the Statute, ſhall be of the ſame Condition as Eſtates in Poſſeſſion were at the Common Law. *Poph.* 82.

ſhall be adjudged in Poſſeſſion of the Lands; of ſuch Eſtate as they had in the Uſe.

**henceforth ſtand and be ſeiſed and adjudged in lawful Seiſin, Eſtate and Poſſeſſion, of and in the ſame Lands and Tenements, and of and in ſuch Eſtates as they had in the Uſe; and that the Eſtate, Right and Poſſeſſion, that were in ſuch Perſons as were or hereafter ſhall be ſeiſed to the Uſe of any ſuch Perſon or Perſons, be from henceforth clearly deemed** in Ceſtuy que Uſe, **after ſuch Quality, Manner and Form as they had in the Uſe** (a): **And this is the Remedy that the Makers of that Act have provided to ſalve all the Miſchiefs aforeſaid.** 1 Rep. 125. b.

82. *Vaugh.* 49. *Carter* 197. *Co. Litt.* 271. *b. Raym.* 148.

The Intent was to join the Uſe and Poſſeſſion, where the Uſe and Poſſeſſion were ſeverally in one, or more ſeparate Perſons.

The Intent of the Statute was to bring together the Poſſeſſion and the Uſe, when the Uſe was to one or more Perſons, and the Poſſeſſion in one or more other ſeparate Perſons; which Intent, ſays *Vaughan*, was, ſoon after the Statute, wholly declined, upon what Conſideration he knew not.

But now an Uſe, by the Name of a Truſt, remains ſeparate in ſome Perſons, and the Poſſeſſion ſeparate in others, and are not joined.

For now, ſays he, an Uſe, (by the Name of Truſt, which were one and the ſame before the Statute) remains ſeparately in ſome Perſons, and the Poſſeſſion ſeparately in others, as it did before the Statute; and are not brought together but by Decree in *Chancery*, or voluntary Conveyance of the Poſſeſſor of the Land to *Ceſtuy que Truſt*. *Vaugh.* 50.

How Truſt and Uſe differ.

A Truſt and a Uſe do not differ ſo much as *in intentione*, not *in ſecundis notionibus*. Carter 197.

The Word *Truſt* is proper to limit an Uſe, unleſs limited to the Uſe of one in Truſt.

The Word *Truſt* is proper for the Limitation of an Uſe, and the Eſtate ſhall execute unleſs it is firſt limited to the Uſe of a Man and his Heirs, in Truſt for another. *Note*; There the Intent is, that it ſhould be Truſt only. 2 *Ventr.* 312. *Vide Mich.* 9 *Will. Lloyd* and *Carew*.

Feoffment in Fee to Uſes without Conſideration, ſo much of the Uſe as is undiſpoſed of remains in Feoffor.

(a) Whoever is ſeiſed of Lands hath not only the Eſtate of the Land in him, but the Right to take the Profits, which is in the Nature of an Uſe; and therefore when he makes a Feoffment in Fee, without a valuable Conſideration, to divers Uſes, ſo much of the Uſe as he diſpoſeth not of, is in him as his ancient Uſe in Point of Reverter. *Co. Litt.* 23. *a.* 2 *Sid.* 157.

The Statute gives him Poſſeſſion who had only the Uſe.

The Statute of Uſes is properly to give to him, who had no Poſſeſſion but only an Uſe, the Poſſeſſion which he wanted before to the Uſe which he had before, in ſuch manner as he hath the Uſe. *Vaugh.* 42.

May revoke an old, and raiſe a new Uſe.

An old Uſe may be revoked, and a new one raiſed at the ſame time. *Vaugh.* 42. 1 *Rep.* 174. *a. b.*

Every Uſe *in eſſe* is executed.

**By which Words it appears plainly, that every Uſe** in eſſe, viz. **in Poſſeſſion, Reverſion, or Remainder, is executed by this Act.**

But no contingent Uſe or Right is executed until it comes *in eſſe*.

To every Execution of a Uſe are requiſite,

1. A Perſon ſeiſed.

2. *A Ceſtuy que Uſe in eſſe*.

3. An Uſe *in eſſe*.

4. The Eſtate muſt be veſted in *Ceſtuy que Uſe*.

**But that no contingent Uſe or Right is executed by this Act, until it comes** in eſſe (a); **for to every Execution of an Uſe these four Things are requiſite,**

**1. There ought to be a Perſon ſeiſed.**

**2. There ought to be a** Ceſtuy que Uſe in Eſſe.

**3. There ought to be a Uſe** in eſſe **in Poſſeſſion, Reverſion, or Remainder.**

**4. The Eſtate, out of which the Uſe ariſes** (b), **ought to be veſted in** Ceſtuy que Uſe; **for the Words are that the Eſtate of ſuch Perſon ſeiſed to the Uſe, ſhall be adjudged in** Ceſtuy que Uſe. 1 Rep. 126. a.

Where Uſes are limited to Perſons *in eſſe*, and Perſons not *in eſſe*.

(a) It is a Rule when Uſes are limited to Perſons *in eſſe*, and Perſons not *in eſſe*; the Uſes limited to thoſe Perſons who can take ſhall take, and when the other Perſons come *in eſſe*, they ſhall take. *Cart.* 261.

The Statute never intended to execute future Uſes, which were to be raiſed at a time to come, upon a Contingent; as to Infants not born, it never intended to execute an Uſe in them until they were *in eſſe*.

A Uſe muſt riſe only by one Way.

(b) A Uſe cannot ariſe partly by one way, and partly by another. But where a Man covenants to ſtand ſeiſed to an Uſe, to commence after his Death; the Covenantor is hereby become ſeiſed for Life. *Moore* 303. 1 *Mod.* 161.

The Tenant in Fee has but two Ways to raiſe an Uſe.

**When a Man is ſeiſed of an abſolute Eſtate in Fee-ſimple he hath but two Ways to raiſe an Uſe, viz.**

By parting with the Poſſeſſion.

**The one is by departing with the Poſſeſſion by the Circumſtances required by the Common Law, to the intended Uſe; as by Feoffment, Fine, or Recovery.** Plow. Com. 301. a. b. Co. Litt. 271. b.

By keeping the Land, yet to make the Poſſeſſion to another's Uſe.

**The other Way is by keeping of the Lands in his Hands without departing therewith, and yet to make the Poſſeſſion to be to the Uſe of another; and this cannot be without a good and ſufficient Conſideration** (c), **to make the Poſſeſſion to be to another's Uſe; and it muſt be upon a Contract, Covenant, or Grant, upon Conſideration.** Plow. Com. 301. b. 302. b. Co. Litt. 271. b. Carter 143.

On a Bargain and Sale for Money, no other Uſe can be appointed.

(c) Where one doth bargain and ſell Land for Money, in which Caſe the Law doth make an expreſs Uſe, (*viz.* to the Bargainee) no other Uſe can be appointed.

Two Ways to raiſe an Uſe without Tranſmutation of Poſſeſſion.

When a Man ſeiſed of Land, will thereof make an Uſe, without Tranſmutation of the Poſſeſſion, it can be done but two Ways, *viz.* by Bargain and Sale, and Covenant to ſtand ſeiſed upon a good Conſideration. *Plow. Com.* 304. *a.* 2 *Sid.* 157. 1 *Rep.* 176. *a.* 177. *a.*

A Tenant in Tail cannot ſtand ſeiſed to an Uſe.

If an Eſtate is made to a Man and the Heirs of his Body, to the Uſe of another and his Heirs, this is void; for a Tenant in Tail cannot ſtand ſeiſed to an Uſe. *Litt.* 19. *b.* *Vide Cooper* and *Franklin* in *Bulſtrode.*

Tenant in Fee bargains and ſells for Money, he is ſeiſed to the Uſe of the Bargainee.

**As where a Man ſeiſed in Fee, bargains and ſells in Conſideration of Money (a), this is a Contract, and the Bargainor is ſeiſed to the Uſe of the Bargainee, by Act of the Common Law; becauſe he hath bargained and ſold for Money, which is a good Conſideration; and becauſe he hath the Money, or ſomething for it, and for that the Land cannot be his, becauſe he hath not Livery; for this Reaſon Neceſſity hath inveſted an Uſe in him, which is but agreeable to Equity, to have the Profits of the Lands to his own Uſe (b); and if the Bargainor would not permit him, Reaſon veſts a Title in him to compel him.** Plow. Com. 302. b.

(a) Paid or ſecured to be paid. *Plow. Com.* 301. *b.*

(b) By the Intent of the Makers of the Act, a Man may be ſeiſed by Bargain and Sale, or by Covenant or Agreement; and a Bargain and Sale is when a Recompence is given by both Parties, *viz.* the one bargains and ſells his Land, and the other gives his Money. *Plow. Com.* 304. *a.* *Carter* 145. *Englefield's* Caſe. 7 *Rep.* 13. *b.*

A Man may be ſeiſed by Bargain and Sale, Covenant or Agreement.

But an Uſe cannot ariſe by Covenant, Proviſo, or Bargain and Sale, on a general Conſideration.

But an Uſe cannot ariſe by any Covenant or Proviſo, or Bargain and Sale, upon a general Conſideration; (as for divers good Cauſes and Conſiderations he bargains and ſells to *J. S.* and his Heirs, this is void.) But in this Caſe the Bargainee * may aver that Money, or other valuable Conſideration was paid. 1 *Rep.* 176. *b.* 177. *a.*

But *Quære* if a valuable Conſideration may be averred.

* *Quære*, Since the Statute of Frauds, and 4 & 5 *Annæ.* *Vide Fitz-Gib.* 301, 302. and *Caſes in Chancery and K. B.* from 4 to 7 *Geo.* 2. 107. S. C. determined. 2 *Williams* 204.

An Uſe will not riſe on a Covenant to ſtand ſeiſed, without averring Conſideration of Blood.

So if I covenant that for divers good Conſiderations, I and my Heirs will ſtand ſeiſed to the Uſe of *B.* and his Heirs; here no Uſe will riſe without the Averment of Conſideration of Blood, there being no particular Conſideration mentioned in the Deed. 1 *Rep.* 176. *a.* 177.

But Uſes will riſe by Recovery, Fine, or Feoffment, without Conſideration.

But had the Uſes ariſen by Recovery, Fine or Feoffment, there (being a Tranſmutation of Eſtate) needs no Conſideration. 1 *Rep.* 176. *b.* 177. *a.* but *vide Lutw.* 823. ſeems contrary.

Covenantor on a good Conſideration ſhall ſtand ſeiſed to Uſe.

**So alſo a Covenant upon a good Conſideration, as to marry a Daughter, &c. there, upon the Marriage the Covenantor ſhall ſtand ſeiſed to that Uſe; and al-**

Where no Tranſmutation of Poſſeſſion, there muſt be a good Conſideration.

**ways where there is no Tranſmutation of the Poſſeſſion, it is neceſſary and requiſite that there be a good Conſideration to (a) create an Uſe.** Plow. Com. 202. b. 7 Rep. 13. b.

But *Ceſtuy que Uſe* may grant without Conſideration:

But muſt be a Conſideration to create an Uſe *de novo*.

(a) But where there is an Uſe *in Ceſtuy que Uſe*, he may grant or give his Uſe to a Stranger, without any Conſideration. *Plow. Com.* 203. *b.* Tho' to create a Uſe *de novo* by Deed out of the Land, it cannot be without a good Conſideration. *Ibid.*

Feoffment in Fee without Conſideration and Uſe, is to the Uſe of Feoffor.

A Man makes a Feoffment, without any Conſideration, to another and his Heirs, and ſays not to whoſe Uſe; this ſhall be to the Feoffor and his Heirs. *Lutw. arguendo.* 823. *Per Harper* Juſtice in *Brent*'s Caſe, 2 *Leon.* Caſe 25. See Title *Feoffment*. And in Caſe of a Recovery, (which is the ſame.) 9 *Rep.* 8. *b.* 11. *a.*

Conſideration of Blood will raiſe an Uſe.

**The Affection that a Man hath for his Heirs Male, which he ſhall beget, and that the Land ſhall remain to his Blood and Name, and for the Brotherly Love which he hath for his Brothers, are ſufficient Cauſes to raiſe an (b) Uſe.** Plow. Com. 309. b.

(b) But a Baſtard Son is not a ſufficient Conſideration to raiſe an Uſe. *Co. Litt.* 123. *a.*

Uſes raiſed in Conſideration of paternal Love; and Proviſo to make Leaſes:

Covenantor cannot make any Leaſe on a general Conſideration,

but if by Recovery or Fine, might.

When Uſes are raiſed by a Covenant in Conſideration of Paternal Love to Sons or Daughters, or Advancement of a Man's Blood; and there is a Proviſo, that the Covenantor for divers good Cauſes and Conſiderations, may make Leaſes for Years: In this Caſe the Covenantor cannot make a Leaſe to his Son or Daughter, or any of his Blood, much leſs to any other Perſon; Becauſe the Power to make Leaſes was void when the Indenture was ſealed; for the Covenantor cannot raiſe an Uſe upon ſuch general Conſideration; but had it been upon a Fine or Recovery, it had been good. 1 *Rep.* 176. *b.*

May deviſe to one to another's Uſe.

**A Man may by Will deviſe his Land to the Uſe of another.** 2 Ventr. 312. Moor 107. Poph. 4.

Feoffment to the Uſes in a Will: The Uſe and Eſtate veſts in the Feoffee.

**Where a Man makes a Feoffment to ſuch Uſes as he ſhall appoint in his laſt Will, here the Uſe and Eſtate veſts in the Feoffee (b), and the laſt Will is directory.** Co. Litt. 111. b.

To the Feoffor's Uſe in the mean Time, if without Conſideration.

(b) By Intendment of Law the Feoffee ſhall be ſeiſed to the Uſe of the Feoffor in the mean Time. *Co. Litt.* 271. *b.* The Feoffment being made without Conſideration, and the Feoffor not having in the mean Time diſpoſed of the Profits, it is but reaſonable that he himſelf ſhould have them. *Co. Litt.* 271. *a. b.*

The Difference between a Feoffment to perform a Will, and a Feoffment to the Uſe of ſuch Perſon as appointed in his Will.

There is a Difference between a Feoffment upon Confidence, or to the Intent to perform his Will, and a Feoffment to the Uſe of ſuch Perſons, and of ſuch Eſtates, as he ſhall appoint by his Will.

For in the firſt Caſe, the Land paſſeth by the Will, and not by the Feoffment; for after the Feoffment the Feoffor is ſeiſed in Fee as he was before.

But in the latter, the Will purſuing his Power, is but a Direction of the Uſes of the Feoffment, and the Eſtate paſſes by Execution of the Uſes which were raiſed upon the Feoffment; but in both Caſes the Feoffees are ſeiſed to the Uſe of the Feoffor and his Heirs in the mean Time. *Co. Litt.* 271. *b.*

A Fine levy'd of a Reverſion or Rent to Uſes: *Ceſtuy que Uſe* may diſtrein as if Attornment.

Since the Statute of Uſes, if a Fine is levied of a Reverſion to Uſes, or of a Rent, becauſe the Uſe and Poſſeſſion by the Statute come inſtantly together, and the Conuſee of the Fine hath no Time poſſible to bring either a Quid juris clamat, or Quem redditum reddit, for or to receive an Attornment to perfect his Poſſeſſion; the Ceſtuy que Uſe ſhall notwithſtanding diſtrein, and have the ſame Advantage as if the Conuſee's Poſſeſſion had been perfected by Attornment (a) and Seiſin. Vaugh. 50, 51.

(a) But now Attornments are all gone by the 4 & 5 *Annæ*.

A Rent ſhall ariſe out of the Eſtate of *Ceſtuy que Uſe*, on a Recovery.

A Rent ſhall (by Virtue of the Statute) ariſe out of the Eſtate of Ceſtuy que Uſe, upon a Recovery, which was to ariſe out of the Eſtate of the Recoveror and his Poſſeſſion; becauſe by the Intention of the Parties the Ceſtuy que Uſe was to pay the (b) Rent. Vaugh. 52.

A Recovery had, and no Uſe declared, it is to the Party's own Uſe.

(b) Where a Man ſuffers a Recovery, and declares no Uſes of it, it ſhall be to his own Uſe. See for this in Title *Recovery*. 9 *Rep.* 8. *b.* 11. *a.*

Feoffees to the Uſe of the Feoffor for Life, and his Heirs in Fee; the Warranty deſtroyed.

Where Feoffees are ſeiſed to the Uſe of the Feoffor for his Life, and afterwards to the Uſe of the right Heirs of the Feoffor; when by the Operation of the Statute, the Poſſeſſion is brought to theſe Uſes, the Warranty made by the Feoffor to the Feoffees and their Heirs is wholly deſtroyed, the Warranty being extinguiſhed by ſuch Execution of Eſtate, and releaſed in Law; for it could be in none but the Feoffor and his Heirs, who could not warrant to himſelf or themſelves. Vaugh. 389.

Feoffment, in Conſideration of Love to his Son, to the Uſe of himſelf for Life, Remainder to his Son in Tail:

A. ſeiſed in Fee by Indenture between him and B. his Son of the one Part, and two Strangers of the other Part, in Conſideration of Love to his Son, gives, grants and enfeoffs the two Strangers to the Uſe of himſelf for Life, Remainder to the Son in Tail; the Jury found the Deed ſealed, but not executed by Livery or Attornment (a): And held that no Uſe was raiſed by this Conveyance.

Without Livery no Uſe ariſes.

(a) But there was a Covenant with the Strangers, that they ſhould hold free from Incumbrances.

I. No Eſtate paſſed to the Strangers, becauſe there was no Conſideration to raiſe it.

II. If an Uſe would ariſe, it would be by Tranſmutation of Poſſeſſion, which could not be here, becauſe the Deed was not executed to paſs an Eſtate at Law.

III. The Intention of the Parties is the Foundation of Uſes, but this Intention ought to have three Qualifications.

1. It ought to be manifeſt out of the Deed.

2. It ought to be according to the Rules of Law.

3. The Intent ought to be taken upon the intire Deed.

IV. The Covenant here cannot raiſe an Uſe, that being only, that the Strangers ſhould enjoy freed from all Incumbrances.

1. Becauſe it is made to Strangers.

2. It is made between the Parties only, not mentioning their Heirs, and ſo intended to be perſonal.

3. If it had been good, it would enure only to free the Land from Incumbrances. 1 Sid. 25, 26. See Ley's Reports, Bulkley's Caſe, 59, 60. 3 Rep. 94. b. 2 Vent. 319.

A Grant of a Reverſion expectant on Life, in Conſideration of natural Love to B. his Son, to the Uſe of himſelf for Life, the Son in Tail, Remainder in Tail is void.

A. ſeiſed in Fee of a Reverſion, expectant upon an Eſtate for Life, by Deed Poll, in Conſideration of natural Love to his Wife, and B. his Son begotten on her Body, and C. his Daughter, did give, grant, and confirm to B. his Son, (b) all thoſe Lands, &c. The Reverſion and Reverſions, &c. To hold to him to the Uſes following, viz. To himſelf for Life, and after to the ſaid B. his Son in Tail, and after to C. his Daughter in Tail. A. died, B. the Son deviſes to the Leſſor of the Plaintiff, and died ſans Iſſue. C. the Daughter, by Pretence of her Remainder, enter'd, againſt whom an Ejectment was brought of the Demiſe of B. the Deviſee; there was no Execution of this Deed but Sealing and Delivery.

(b) Now there being no Execution by Livery and Attornment, the Deed was void in its Creation, ſo that no Uſe could ariſe out of it, being a void Deed.

The ſole Queſtion was, Whether this Deed ſhould amount to a Covenant to ſtand ſeiſed, or be void? And it was firſt adjudged to amount to a Covenant to ſtand ſeiſed, but afterwards reverſed, and adjudged a void Deed, and the Reverſal affirmed in Parliament. 2 Vent. 318, 319.

An Uſe ſhall not ariſe by a Covenant, where intended to be raiſed otherwiſe.

An Uſe ſhall not riſe by Covenant nor Declaration, where it was intended to be raiſed otherwiſe.

What Words will amount to a Covenant to ſtand ſeiſed.

What Words amount to a Covenant to ſtand ſeiſed. 3 Mod. 237. Comb. 128. 3 Salk. 384.

How it differs from a Covenant at the Common Law.

How a Covenant to ſtand ſeiſed differs from a Covenant at the Common Law. 2 Mod. 207.

Where no Tranſmutation of Poſſeſſion, there muſt be a good Conſideration to raiſe an Uſe.

Where there is no Tranſmutation of Poſſeſſion, it is abſolutely neceſſary to have a good Conſideration to raiſe an (a) Uſe; and a Conſideration is a meritorious Act, requiring a mutual Recompence in Fact, or in Law: In every Promiſe which gives an Action, there muſt be a Conſideration, which muſt be either beneficial to him who made the Promiſe, or prejudicial to him who brings an Action. Carter 138, 139.

1. There muſt be a good Conſideration to raiſe thoſe Uſes which are to ariſe by Bargain and Sale, or Covenant to ſtand ſeiſed. *Mildmay*'s Caſe. 1 *Rep.*

2. There muſt be a Deed teſtifying it, and if by Bargain and Sale, it muſt be inrolled.

3. The Bargainor or Covenantor muſt be ſeiſed at the Time.

The Uſe muſt agree with the Rules of Law.

4. The Uſe ought to agree with the Rules of the Common Law. *Raym.* 46.

Bargain and Sale to B. to the Uſe of *A.* for Life, and B. in Tail, is void.

If *A.* for Money bargains and ſells Land to *B.* and his Heirs, to the Uſe of *A.* for Life, and after of *B.* in Tail, and after of *J.* in Fee, all theſe Uſes are void; for a Uſe cannot riſe out of a Uſe. *Shepherd*'s *Aſſurances* 510.

Now no Conſideration but Blood or Marriage will raiſe an Uſe upon a Covenent.

Conſiderations of Money, or of Land, tho' the Words are *to ſtand ſeiſed*, yet are Bargains and Sales, and nothing paſſes without Inrollment.

There are no Conſiderations now at this Day to raiſe Uſes upon Covenants, but natural Love and Affection, which is for Advancement of Blood, or Conſideration of Marriage, which is joining of Blood and Marriage together: Other Conſiderations, as Money for Land, or Land for Land, though the Words are, Stand ſeized to Uſes, yet they are Bargains and Sales, and without Inrollment they will raiſe (b) no Uſe.

A Covenant by Bargain and Sale, that *A.* ſhall have his Lands to pay his Debts, nothing paſſes without Inrollment.

(a) In Caſe of an Uſe which riſes by a Will, as where a Deviſe is to a Man and his Heirs, to the Uſe of *J. S.* for Life, or in Tail, *&c.* there needs, I conceive, no Conſideration in this Caſe, nor Tranſmutation of Poſſeſſion, the Law having ſupply'd both the one and the other. *Vide* 2 *Vent.* 312, 313.

(b) If I covenant that *A.* a Stranger ſhall have my Land, to him and his Heirs, to pay my Debts and Legacies; the ſame is by way of Bargain and Sale, and nothing paſſes without Inrollment. 1 *Leon. fol.* 201.

Carter 139. Vide 138. 1 Leon. to 201.

If a Man doth covenant for a valuable Conſideration to ſtand ſeiſed to the Uſe of another, this, if inrolled, is in the Nature of a Bargain and Sale. 2 *Inſt.* 672. *Vide* Title *Bargain and Sale.*

A Covenant for a valuable Conſideration to ſtand ſeiſed to another's Uſe, if inrolled, is in Nature of a Bargain and Sale.

In Conſideration of Natural Affection to my Son, and of one hundred Pounds paid by him, I covenant to ſtand ſeiſed, &c. Says *Bridgman, I think the Principal Conſideration* * *will carry it. And in this Deed, there is a mixt Conſideration, and there needs no Inrollment.* Carter 114. And ſo adjudged *inter Lade* and *Baker*, 2 *Vent.* 266. 3 *Lev.* 291. 4 *Mod.* 149. *Vide Carter* 138.

* Which is the Conſideration of Blood.

Covenant to ſtand ſeiſed in Conſideration of natural Affection, there needs no Inrollment.

Where one, by Indenture made between him and his Son, and two Strangers, in Conſideration of natural Love, did Give, and Grant to the two Strangers, to the Uſe of himſelf for Life, Remainder to his Son in Tail, and no other Execution than the Sealing and Delivery of the Deed; this Deed did not raiſe an Uſe, for the Uſe was limited to riſe out of the Seiſin of the Strangers, who took no † Eſtate. 2 *Vent.* 319. *Hore* and *Dix.* 1 *Sid.* 25. 3 *Salk.* 384, 385.

Where one and his Son of the one Part, and Strangers of the other Part, in Conſideration of Blood, grants to the Strangers, to the Uſe of himſelf for Life, Remainder to his Son in Tail, it raiſes no Uſe.

† Where there was no Eſtate, no Uſe could ariſe; and the Deed not being executed with Livery, here was no Eſtate for the Uſes to riſe out of.

*A.* ſeiſed in Fee, covenanted to ſtand ſeiſed to the Uſe of *B.* in Conſideration of Payment of his Debts out of his own Eſtate; this is a void Uſe, becauſe there was no Conſideration on the Part of *B.* to raiſe the Uſe; the Money appointed to be paid being to be raiſed out of the Profits of the Eſtate of *A.* the Covenantor. 1 *Leon. fol.* 194, 195.

A Covenant to ſtand ſeiſed to an Uſe, in Conſideration of Payment of his Debts out of his Eſtate, is a void Uſe.

A Man covenants that in Conſideration of diſcharging of his Funerals, and Payment of his Debts and Legacies out of the Profits of his Lands, and for the Advancement of his Son, that he would ſtand ſeiſed to the Uſe of himſelf for Life, and after his Death to *C.* and *D.* for twenty-five Years, and after the End of that Term to his Son in Tail. This Term of twenty-five Years was adjudged void for want of a good Conſideration; for that *C.* and *D.* were Strangers to the Conſideration; *viz.* To the Payment of his Debts and Legacies; but if they had been Executors, whereby they became privy to the Conſideration, and chargeable with the Payment of the Debts and Legacies, then the Conſideration * had been good. 1 *Rep.* 154. *a.*

* *Note*; This is in Caſe of a Term for Years, where needs no Inrollment.

A Covenant to ſtand ſeiſed of an Office is void. 3 *Mod.* 145.

A Rent granted in Conſideration of natural Affection and Money, amounts to a Covenant to ſtand ſeiſed.

When the Grant of a Rent is as well in Conſideration of natural Affection as for Money, it will amount to a Covenant to ſtand ſeiſed; and may be ſo pleaded *ſans* Inrollment. 4 *Mod.* 150.

A Covenant to ſtand ſeiſed operates to raiſe an Uſe, not to bring Covenant on it.

Note; A Covenant to ſtand ſeiſed always operates by way of raiſing of an Uſe, but never to have an Action of Covenant upon. 2 Lev. 7.

In a Covenant to ſtand ſeiſed to Uſes, the Uſes undiſpoſed of remain in the Covenantor, to ſerve the contingent Uſes, but in Feoffments the Uſes are diſpoſed of, and muſt come out of the Feoffee's Eſtate.

In a Covenant to ſtand ſeiſed to Uſes, all the Uſes that are not diſpoſed of do return back and remain in the Covenantor, to ſerve the Contingent Uſes when they happen: But per Hale, 1 Ventr. 380. they were never out of him, and ſo cannot return; but in a Feoffment the Uſes are diſpoſed of by the Livery, and the Uſes muſt come out of the Feoffee's Eſtate when the Contingents happen. Note; In the firſt Caſe there is no Tranſmutation of the Poſſeſſion, but the Eſtate and Root, out of which the Uſes ſpring, is ſtill in the Covenantor; in the other Caſe it is in the Feoffee by reaſon of the Tranſmutation of Eſtate. Carter 202.

Feoffment in Fee, to the Uſe of himſelf for Life, then to the Uſe of *B.* for Life, then to the Uſe of *C.* for Life, &c. If *B.* refuſes, *C.* ſhall take his Remainder preſently.

But on a Covenant to raiſe Uſes, every Uſe is ſeveral.

And if one refuſes, the next in Remainder ſhall not take preſently.

A. makes a Feoffment in Fee to the Uſe of himſelf for Life, and after to the Uſe of B. for Life, and afterwards to the Uſe of C. for Life, and afterwards to the Uſe of D. in Fee: A. dies, and B. refuſes: C. ſhall take his Remainder preſently upon the Refuſal of B. (a) for the Feoffor hath by his Feoffment given all the Eſtate out of himſelf, and all the Uſes are created out of it, as out of one Root; and therefore ſo long as the Uſes can take any Effect, the Feoffor ſhall not have any thing to do with the Land (b): But in Caſe of a Covenant, which raiſes an Uſe, there the Conſideration, which is the Cauſe that raiſes every ſeveral Uſe, is ſeveral; and all the Uſes ariſe and grow out of the Eſtate of the Covenantor (c), therefore if one refuſes, he who is next in Remainder ſhall not take the Land preſently, but the Cove-

Feoffor to Uſes departs with all the Eſtate out of him. But on a Covenant to ſtand ſeiſed, he may have the Eſtate again on Refuſal of *Ceſtuy que Uſe*.

(a) Where a Man makes a Feoffment to Uſes, he departs with all the Eſtate out of him; but when he covenants to ſtand ſeiſed he hath a Poſſibility of having the Eſtate again, upon the *Ceſtuy que Uſe*'s refuſing to accept. 2 *Sid.* 157.

On a Feoffment to Uſes all is out of the Feoffor; tho' ſome are void, yet the other ſhall ſtand.

(b) Where a Uſe is raiſed by Feoffment, all is out of the Feoffor, the Land is gone, the Uſe is gone, nothing remains but Authority to raiſe Uſes out of the Poſſeſſion of the Feoffees; and being new Uſes, there, altho' ſome are void, the other ſhall ſtand. 1 *Leon.* 197. *Per Owen.*

If an Uſe is raiſed by Covenant, the Covenantor continues Poſſeſſion; and the Uſes ſhall draw the Poſſeſſion, if according to Law.

(c) Where an Uſe is raiſed by Covenant, the Covenantor continues in Poſſeſſion; and the Uſes limited, if they are

Covenantor ſhall retain it until the next Uſe comes in eſſe; As if A. covenants, that in Conſideration that B. is his Son, that he ſhall have the Land for his Life, with Remainder to C. his Son in Fee: The Conſideration and Ground of raiſing theſe Uſes are ſeveral; and if B. refuſes, A. ſhall retain the Land, and C. ſhall not take till after the Death of B. 1 Rep. 154. a. b. 1 Leon. fol. 200. 1 Vent. 374.

are according to Law, ſhall raiſe and draw the Poſſeſſion out of him; but if not, the Poſſeſſion remains in him until a lawful Uſe ariſeth, which ſhall not ariſe before its Time for any Defect in the Uſe precedent. 1 *Leon. fol.* 197. 1 *Vent.* 374. 1 *Mod.* 159, 160, 161.

**Covenant to ſtand ſeiſed, ſuch Uſes as are undiſpoſed remain in the Covenantor.**

In the Caſe of a Covenant to ſtand ſeiſed, ſo much of the Uſe as the Owner of the Land doth not diſpoſe of remains ſtill in him. 1 *Vent.* 374.

So alſo nothing moves out of the Covenantor; he retains the Land and directs the Uſe, and keeps ſufficient in him to maintain the Uſe. 1 *Vent.* 374. 1 *Mod.* 159, 160, *&c.*

If there is a Limitation of an Uſe to one after the Death of another, the Covenantor ſhall retain the Land, during the Life of the other. *Ibid.*

**Covenant to ſtand ſeiſed to the Uſe of *J. S.* after forty Years, is a Fee in the Covenantor.**

And where a Man covenants to ſtand ſeiſed to the Uſe of *J. S.* after forty Years, here is a Fee-ſimple determinable in the Covenantor in the mean time. 1 *Vent.* 379.

**A Grant *quouſque* Grantee and Heirs had levyed ſo much Money:**

An Eſtate was granted to the Uſe of the Grantee and his Heirs, quouſque they had levied ſo much (a) Money. Carter 74.

**Was not raiſed when it might;**

**yet Feoffees may hold over.**

The Money was not raiſed when it might have been: The Queſtion was, Whether the Feoffees might enter and hold over againſt the Son and his Wife, who come in as Purchaſors? And the Court all held that they may. Carter 76.

The Reaſons follow.

**A Grant to *A* and his Heirs, until five hundred Pounds is raiſed, is a Fee-ſimple limited.**

(a) If Land is conveyed to *A.* and *B.* and their Heirs, until five hundred Pounds be raiſed, it is a Fee-ſimple limited, or Conditional; the Difference is between a Limitation to *A.* * till 500 *l.* be raiſed, that perhaps in an Uſe may be but a Chattel: But if it be to *A.* and *B.* till ſo much be raiſed; that perhaps is doubtful: But if it be to *A.* and his Heirs, until five hundred Pounds be raiſed, it is a limited Fee; and what Eſtates are limited over are contingent. *Carter* 107.

* Without Heirs.

**Limitations over are contingent.**

**Quouſque it ſhall be, is as good as if it had been, ſhall or may be levied.**

Although the Words are *Quouſque* ſo much Money ſhall be levied out of the Profits of the Land, yet that is the ſame in Law, as if it had been ſaid, ſhall or may be levied out of the Land; otherwiſe it would be in the Power of thoſe appointed to levy the Sum of Money (if they could defer the Levying of it) to exclude him in Remainder or Reverſion from taking of the Profits for ever. 4 *Rep.* 81. *b.* 82. *a.*

And if the Heir at Law, or he in Remainder, enter on him,

he may bring his Action for the meſne Profits, or enter, or hold over.

Alſo where the Heir at Law, or he in Reverſion or Remainder *, enters upon him to whom the Land is deviſed or limited, and doth expulſe him, here it is at the Election of ſuch Perſon ſo expulſed, either to bring his Action, and recover the meſne Profits towards raiſing of the Sum, or elſe to re-enter and hold over until he hath levied the Money: And the Time wherein he was expulſed, ſhall be accounted no Part; for when he who is to have the Land commits the Tort, he ſhall not take Advantage of it. 4 *Co.* 82. *b.*

And if Deviſee has no Notice, and a Stranger enters, the Time ſhall go on.

But if the Heir conceal the Will, and take the Profits, Deviſee may hold over.

And if the Deviſee hath no Notice of ſuch Deviſe, and a Stranger enters and occupies the Land, there the Time ſhall go on; for where no Body is bound to give Notice, the Deviſee muſt take Notice at his Peril. But where the Heir at Law, or any claiming under him, conceals the Will, and enters and takes the Profits, there the Deviſee may enter and hold over. 4 *Rep.* 82. *b.* 83. *a.*

A Grant of ten Loads of Fuel to be yearly taken in ſuch a Wood: If Grantee fails taking them at the appointed Time, he ſhall not take them after.

Says Bridgman, Ch. Juſt. Let us ſearch into the Reaſon of the Law, touching Holding over againſt an Heir or an Aſſignee: Where the Profits are unjuſtly with-held, although theſe Kinds of Limitations are created by the Statute of Uſes, and Wills only, yet the Reaſon is grounded upon the Common Law: If I grant to a Man ten Loads of Fuel to be taken in my Woods, at a certain Feaſt, from Year to Year, for his Life or Years; and the Grantee doth not take it every Year, but ceaſeth two or three Years together, he ſhall not take all the four Years, neither ſhall he have any Remedy; for it was his Folly that he did not take it at the appointed Time. Carter 76, 77.

A Difference between a Grant of a Thing which is in *Render*, and where in *Prender*.

A Difference was taken between a Grant of a Thing in Render, and a Thing in Prender: If I grant to a Man four Hundred Load of Fagots yearly, out of all my Lands; if he take them not one Year he cannot take them double the next.

But if the Grantor was to deliver 'em, Grantee ſhall have double the next Year.

But where the Grantor himſelf was to cut them, ſo as he is to do the firſt Act, and ſo lies in Render; then he ſhall receive double the next Year.

An uncertain Eſtate limited until a Sum paid, if the Heir interrupts the taking of the Profits, the Grantee may bring his Action, or hold over.

If Conuſor interrupts Tenant by *Elegit*, he ſhall hold over.

But where the Eſtate limited is uncertain, quouſque ſuch a Sum be raiſed, where the Determination is caſual, there if the Heir or Reverſioner will hinder me to take the Profits, he ſhall not take Advantage of his Wrong; But it is at my Election to bring my Action, or hold over (a) at the Common

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* *Viz.* The Party out of whoſe Eſtate the Money is to be raiſed.

(a) In caſe the Conuſor or his Heir interrupts Tenant by

**mon Law, the Law makes the Conſtruction, for if the Party himſelf does the Wrong (a) he ſhall take no Advantage of it.** Cart. 77. 4 Rep. 82. b.

by *Elegit*, or Tenant by Statute, they ſhall hold over; for the Law makes Conſtruction that the Party ſhall not take the Advantage of his own Wrong. *Cart.* 77. It was a Wrong to take thoſe Profits which belonged to another. *Cart.* 78.

(a) So likewiſe if his Aſſignee, or any claiming under him. *Cart.* 77.

Although no Body entered upon the Perſon who was to pay, yet he who ought to have paid, did a Tort when he failed to pay; and at the beſt he is but Tenant at Sufferance. *Cart.* 78. 4 *Rep.* 82. *b.*

Covenant to pay certain Sums, and if not paid, the Feoffees to ſtand ſeiſed till the Money levied; on Failure they may enter.

**Now where there is a Covenant to pay certain Sums of Money, and a Declaration, that if theſe Sums be not paid, the Feoffees ſhall ſtand ſeiſed of the Premiſes till they have levied the ſaid Sums; when there is a Failure of Payment, they may enter, and if the Heir hath not entered upon them they may hold over;** pari ratione **when he continues and receives (b) the Profits.** Cart. 77.

And a Uſe is a Charge on the Land, and cannot be deſtroy'd.

(b) Nay if he had aſſigned, or for a valuable Conſideration conveyed over the Land, after the Failure of Payment; the Feoffee or Aſſignee takes the Eſtate, ſubject to his Uſe, and liable to this Charge *. *Cart.* 77.

A Man cannot take a particular Eſtate to himſelf without a Donor, only by Way of Uſe.

**A Man cannot at the Common Law take a particular Eſtate to himſelf, but by Way of Uſe he may without a (c) Donor.** Croſſing and Scudamore, 1 Mod. 121.

(c) As where a Man ſeiſed in Fee covenants to ſtand ſeiſed to the Uſe of himſelf for Life, *&c.*

Nor give an Eſtate to his Wife by Deed, but may covenant to ſtand ſeiſed to her Uſe.

**So a Man by the Common Law cannot give an Eſtate to his Wife by Deed; but he may covenant to ſtand ſeiſed to her Uſe (d), and an Uſe will ariſe to her.** Ibid.

Or deviſe to her.

(d) Or may deviſe to her, by Will in Writing.

**A Man cannot either by Conveyance at Common Law, by Limitation of Uſes, or Deviſe, make his right (e) Heir a Purchaſor.** 1 Vent. 372, &c. Hob. 30.

(c) That which originally veſts in the Heir, and was not in the Anceſtor, veſts in the Heir by Purchaſe. 1 *Rep.* 91. *a.*

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* For a future Uſe is a Charge and Burden upon the Land in whoſoever's Hands it comes, and cannot be deſtroyed. *Cro. El.* 688, 689.

The Name of right Heir is not a Name of Purchaſe between the Anceſtor and Heir. *Poph.* 4.

Who ſhall be Heir to take by Purchaſe. 1 *Rep.* 103. *b.*

Where a Man is in by Deſcent he ſhall be liable to the Acts and Charges of his Anceſtor, under whom he claims.

But where he takes by Purchaſe he there ſtands upon his own Legs, claiming no Inheritance from his Anceſtor, neither ſhall his Anceſtor's Act touch him. *Vide Mich.* 9 *W. in Canc. Lloyd* and *Carew.*

Where the Anceſtor takes a Freehold, and limits an Eſtate to his Heirs; they are Words of Limitation, and not of Purchaſe.

**Where the Anceſtor takes an Eſtate of Freehold, and by the ſame Conveyance, an Eſtate is limited to his Heirs mediately or immediately, they are Words of Limitation and not of Purchaſe; becauſe the Heir is Part of the Father, and a Man (a) cannot give to himſelf.** 1 Rep. 104.

Where the Anceſtor retains an Eſtate for Life, and limits an Eſtate to his Heirs, they ſhall be in by Deſcent.

(a) If an Eſtate for Life is in the Anceſtor, by Way of Retainer, and an Eſtate is afterwards limited to his Heirs, they are Words of Limitation, and the Heir ſhall take by Deſcent, and not by Purchaſe. 1 *Ventr.* 374, 375, *&c.*

On a Covenant to ſtand ſeiſed, he may be Donor and Donee.

Though at the Common Law a Man cannot be Donor and Donee, without parting with the whole Eſtate, yet it is otherwiſe upon a Covenant to ſtand ſeiſed to Uſes: And if any other Conſtruction ſhould be made, many Settlements would be ſhaken; in the making of which, nothing is more uſual now, than for a Man to covenant to ſtand ſeiſed to the Uſe of himſelf, and the Heirs of his Body. *Per Curiam.* 2 *Mod.* 211.

Where the Heir takes an Eſtate as a Reverſion, he is in by Deſcent.

**Where-ever the Heir takes an Eſtate as a Reverſion, there he is in by Deſcent upon an Eſtate remaining to his Anceſtor, and which was his Eſtate, and ought to come to him if he were living, but being dead, he is repreſented by his Heir.** Poph. 3, 4. 2 Rep. 91. b. Mod. Caſes in Law and Equity 23.

But where he claims a Remainder of an Eſtate, deveſted out of the Anceſtor, he ſhall claim by Purchaſe.

**But where-ever a Man claims an Eſtate by Way of Remainder of an Eſtate deveſted out of the Anceſtor, there he ſhall claim by (b) Purchaſe only.** Poph. 3, 4. 2 Rep. 91. b.

(b) Where the Limitation is of a Remainder, the Law will never ſupport it ſo as to conſtrue it any other Way. 1 *Mod. Rep.* 238.

A Covenant to ſtand ſeiſed to the Uſe of the Heirs of his Body, is the ſame as if limited to himſelf, and Heirs of his Body; the Heir and Anceſtor are Correlatives, therefore cannot make the right Heirs Purchaſors, without putting the whole Fee-ſimple out of himſelf.

Tenant in Fee makes a Feoffment in Fee, to the Uſe of his Daughter for Life, Remainder to his Son in Tail, Remainder to the Feoffor's right Heirs

**A Man ſeiſed in Fee makes a Feoffment in Fee, (c) (and ſo parts with his whole Eſtate) to the Uſe of his Daughter for Life, and after her Deceaſe to the Uſe of his Son in Tail, and**

(c) A Man covenanted to ſtand ſeiſed to the Uſe of the Heirs of his Body. *Hale* Ch. Juſt. The Heir and Anceſtor are Correlatives, and as one Thing in the Eye of the Law; and

Yet he hath a Reverſion, and his right Heirs cannot be Purchaſors.

and after to the Uſe of the right Heirs of the Feoffor; here tho' he parted with the whole Fee-ſimple by the Feoffment, (a) and limited no Uſe to himſelf, yet he hath a Reverſion; and whenſoever the Anceſtor takes an Eſtate for Life, and afterwards a Limitation is made to his right Heirs, the right Heirs ſhall not be Purchaſors; (b) and here the Limitation is to his right Heirs, and right Heirs he cannot have during his Life: (c) For (nemo eſt hæres Viventis). The Law creates an Uſe in him during his Life, until the future Uſe comes in eſſe, and conſequently the right Heirs cannot be Purchaſors; (d) and there is no Difference when the Law creates the Eſtate for Life, and when the Party. Co. Litt. 22. b.

No Difference where an Eſtate for Life is created by the Law, or the Party.

and that is the Reaſon why a Man cannot make his right Heir a Purchaſor, without putting of the whole Fee-ſimple out of himſelf; and if the Father's Eſtate turns to an Eſtate for Life, there will be no Queſtion; and in *Fenwick* and *Mitford's* Caſe there reſulted an Eſtate for Life, to knit the Limitation to the original Eſtate.

1. Here we are in the Caſe of an Eſtate-tail, and the Judges uſed to go far in making of ſuch a Limitation good.

2. We are in the Caſe of an Uſe which is conſtrued as favourably as may be to comply with the Intention of the Parties.

If he had covenanted to ſtand ſeiſed to the Uſe of the Heirs of the Body of *A. B.* he had had a Fee in the mean Time.

This Caſe is not as if he ſhould have covenanted to ſtand ſeiſed to the Uſe of the Heirs of the Body of *A. B.* for there the Covenantor would have had a Fee-ſimple in the mean Time; but here it is all one as if the Limitation had been to himſelf, and the Heirs of his own Body. 1 *Mod.* 98.

(a) There being Livery, which is a Tranſmutation of the Eſtate.

Feoffment to the Uſe of ſuch Perſon, and ſuch Eſtate, as he ſhall appoint by his Will: The Feoffor is ſeiſed of a qualified Fee till the Limitation made.

A Man makes a Feoffment in Fee to the Uſe of ſuch Perſon and Perſons, and of ſuch Eſtate and Eſtates, as he ſhall appoint by his Will; here the Uſe veſts in the Feoffor by Operation of Law, and he is ſeiſed of a qualified Fee, until a Limitation is made according to the Power: And after the Will is made, nothing paſſes by it, but all by the Feoffment. 6 *Co.* 17, 18. See *Co. Litt.* 111.

Being no Eſtate is limited to him, the Law creates an Eſtate for Life.

(b) There being no Eſtate limited to him, the Law creates an Uſe in him during his Life, until the future Uſe cometh *in eſſe*; ſo that till then he hath an Eſtate for Life by Implication. 1 *Mod.* 121, 122.

A Covenant, that after his Death his Heir ſhall ſtand ſeiſed to a Uſe, is void.

(c) A Man covenants, that after his Death his Heir ſhall ſtand ſeiſed to the Uſe of his younger Son; it is void. *Hob.* 313.

(d) *Vide Fenwick* and *Mitford's* Caſe in *Moore*, and *Pibus* and *Mitford's* Caſe in 1 *Ventr.* 372, 373, *&c.* 226, 237. *Liſle* and *Grey* in *Raym.* 228, *&c.* 1 *Mod.* 158, 159, 160, 161. 121. 226. 1 *And.* 69. *Hob.* 30. 2 *Lev.* 75. 2 *Mod.* 207. 4 *Mod.* 360. *Carth.* 272.

**Feoffment to the Uſe of the Heirs of his Body is an Eſtate for Life in Feoffor.**

A Man makes a Feoffment to the Uſe of the Heirs of his Body: (*Note*; Not of himſelf, and the Heirs of his Body,) this is an Eſtate for Life in the Feoffor. *Roll. Rep.* 240. 1 *Mod.* 160, 161.

If limited to the Uſe of himſelf for Life, Remainder to another in Tail, Remainder to his own right Heirs, the Reverſion had been in him.

And if the Limitation had been to the Uſe of himſelf for Life, and after to the Uſe of another in Tail, and after to the Uſe of his own right Heirs, the Reverſion in Fee had been in him; becauſe the Uſe of the Fee continued ever in him, and the Statute executes the Poſſeſſion to the Uſe (a), in the ſame Plight, Quality and Degree, as the Uſe was limited. Co. Litt. 22. b.

**The Statute incorporates the Uſe and Poſſeſſion indiſſolubly.**

(a) The Statute incorporates the Uſe and Poſſeſſion of the Land, and hath coupled them together with an indiſſoluble Conjunction; and therefore no more than an Eſtate created by Feoffment, Gift or Grant, may be waived *in pais*, no more may ſuch Eſtate be created by Uſe. 3 *Rep.* 27. *a.*

If Tenant in Fee leaſe for Life, Remainder to the Heirs Male of his Body, the Remainder is void.

So if a Man ſeiſed in Fee leaſes for Life by Indenture, Remainder to the Heirs Male of his Body, this is a void Remainder (b); for the Donor cannot make his right Heir a Purchaſor of an Eſtate-tail without departing with the whole Fee-ſimple out of him. 3 Salk. 294.

(b) If an Eſtate, limited to a Man and the Heirs of the Body of his Father, veſts in him, be it either by Deſcent or Purchaſe, if he die without Iſſue, it ſhall go to his Brother. 1 *Mod. Rep.* 238. They agreed a Man could not make his right Heir a Purchaſor, without parting with the whole Fee, but that by the Uſe he might. 1 *Mod. Rep.* 238. 1 *Ventr.* 381, 373, 374.

But a Feoffment to the Uſe of himſelf for Life, Remainder to his Heirs in Tail Male, it is good.

As if a Man make a Feoffment to the Uſe (c) of himſelf for Life, and then to the Uſe of the Heirs Male of his Body; this is an Eſtate-tail executed in him, and the Limitation is good by Way of Uſe, becauſe it is raiſed out of the Eſtate of the Feoffees, which the Feoffor departed with. 3 Salk. 292. 1 Mod. 159. 1 Vent. 378.

(c) Uſes are directed by the Rules of the Common Law; and as to the Veſting of them differ not from Eſtates conveyed in Poſſeſſion; and no favourable Conſtruction ought to be made for Uſes againſt a Rule of Law. 1 *Mod. Rep.* 238.

So note the Difference between a Leaſe for Life, Remainder in Tail, where the Heir ſhall be in by Deſcent.

And a Feoffment to the Uſe of *A.* for Life, Remainder to his Iſſue in Tail, who ſhall take by Purchaſe.

So note the Difference (a) between a Leaſe for Life, Remainder to the Heirs Male of his Body; in that Caſe the Heir in Remainder ſhall be in by Deſcent: But when it is a Feoffment to the Uſe of A. for Life, Remainder to the Heirs Male of his Body, here the Iſſue in Tail take by Purchaſe. (b) Co. Litt. 22. a. Vide Lewis Bowle's Caſe. 11 Rep.

(a) In the one Caſe the Donor departs with the whole Eſtate out of him, to the Feoffees; in the other Caſe he doth not.

(b) Becauſe *A.* had only an Eſtate for Life, ſo that there was nothing in him for his Iſſue to inherit.

For *A.* had only an Eſtate for Life, and nothing to inherit.

Gift in Tail Female, the Iſſue Female ſhall only inherit.

But a Gift to *A.* for Life, (who has a Son and a Daughter) Remainder to the Heirs Female of his Body, his Daughter cannot take.

Where Lands are given to a Man, and the Heirs Female of his Body, and he dies having Iſſue a Son and Daughter, here the Iſſue Female, and not Male, ſhall inherit; becauſe the Will of the Donor (the Statute working with it) ſhall be obſerved: But in the Caſe of a Purchaſe it is otherwiſe; for where a Man hath Iſſue a Son and Daughter, and a Leaſe of Lands is made to him for Life, Remainder to the Heirs Female of his Body, and he dies, his Daughter takes nothing, becauſe ſhe is not Heir; for, to take by Purchaſe, ſhe muſt be both Heir and Heir Female (c), which ſhe is not, becauſe the Brother is Heir; therefore the Will of the Donor cannot be obſerved, becauſe here is no Gift *, and therefore the Statute de Donis cannot work thereupon. Co. Litt. 24. b. Litt. ſect. 22, 23.

(c) Otherwiſe it is in Caſe of a Deſcent.

* But only a Remainder limited upon a Leaſe for Life.

Covenant to ſtand ſeiſed in Conſideration of Money, and Marriage.

An Uſe will not ariſe without Marriage.

The Marriage is the principal Conſideration, the Money is but the Acceſſary; otherwiſe by Eſtate executed.

If a Man, in Conſideration of Money received, and Marriage to be had with his Son, covenants to ſtand ſeiſed; there no Uſe will ariſe to the Son and Woman without Marriage, altho' the Money be paid; becauſe the Marriage is the principal Conſideration in the Intent of the Parties, and the Money is but the Acceſſary which attends the Marriage; but it would have been good by Eſtate, executed by Fine, Feoffment or Recovery. Moore, Caſe 247.

The Father cannot covenant that his Son ſhall ſtand ſeiſed.

A Father cannot covenant that his Son ſhall ſtand ſeiſed of the Lands whereof the Father is ſeiſed; for a Man cannot ſtand ſeiſed of that which he is not ſeiſed of. 3 Lev. 306, 307. 1 Vent. 140.

## A Deed of Covenants to ſtand ſeiſed.

A Deed to ſtand ſeiſed to Uſes.
The Conſideration.

THis Indenture made between J. L. of, &c. and C. and D. &c. Witneſſeth that the ſaid J. L. for ſettling and eſtabliſhing of all the Meſſuages, Farms, Lands, Tenements, and all other the Hereditaments hereafter mention'd, to remain and continue in the Blood of the ſaid J. L. in ſuch Manner and Sort as hereafter is herein and hereby limited and expreſſed, and for and in Conſideration of the natural Love and Affection which he beareth unto thoſe to whom the Eſtates are hereafter limited, and for the Advancement of E. his Son, and others of his Blood hereafter mention'd (a), he the ſaid J. L. doth hereby, for him and his Heirs, covenant, grant, and agree, to and with the ſaid C. and D. and their Heirs, (b) that he the ſaid J. L. and his Heirs, ſhall

Where there is no Tranſmutation of Poſſeſſion, as in this Covenant to ſtand ſeiſed, there muſt be a good Conſideration to raiſe a Uſe; as for Love or Affection, or Marriage.

(a) Where there is no Tranſmutation of the Eſtate (as in this Caſe there is not, it being by Covenant to ſtand ſeiſed) the Eſtate remains ſtill in the Covenantor; but in caſe of a Feoffment it is otherwiſe; for there being a Tranſmutation of the Eſtate upon the Livery, it is abſolutely neceſſary to have a good Conſideration to raiſe an Uſe; as natural Love or Affection, or in Conſideration of Marriage, are good Conſiderations. *Plow.* 309. *b.* But Money will not (upon a Covenant to ſtand ſeiſed) raiſe an Uſe without Inrollment. 1 *Leon. fol.* 201. *Vide* before, and *Raym.* 248. and *Bedel's* Caſe, 7 *Rep.* and 2 *Roll. Abr.* 782. Tho' an Uſe will riſe upon a Leaſe and Releaſe, if there be five Shillings Conſideration in the Leaſe; and no Conſideration at all in the Releaſe.

But Money will not raiſe an Uſe without Inrollment.

But a Uſe will riſe on a Leaſe and Releaſe, if a Conſideration of five Shillings is in the Leaſe, tho' none in the Releaſe.

(b) A Man ſeiſed in Fee by Indenture inrolled within ſix Months, for and in Conſideration of natural Love to his Daughter, and for the Augmentation of her Portion and Preferment in Marriage, and other valuable Conſiderations, did give, grant, bargain, ſell, alien and enfeoff, and confirm to his ſaid Daughter and her Heirs: * There was no other Conſideration than that before mentioned; and whether Conveyance was ſufficient was the Queſtion.

By Indenture inrolled in Conſideration of natural Love to his Daughter, did give, grant, bargain, ſell and alien to her, &c. Q. Whether a good Deed.

Now there are five Things neceſſary to raiſe an Uſe by Way of Covenant to ſtand ſeiſed.

Five Things neceſſary in a Covenant to raiſe an Uſe.

I. A ſufficient Conſideration.

II. A Deed.

1. A good Conſideration.
2. A Deed.

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* This was the Caſe of *Croſſing* and *Scudamore*, 1 *Vent.* 137. 1 *Mod.* 175.

ſhall and will from henceforth ſtand and continue ſeiſed of and in all that Meſſuage, (&c.) together with all and ſingular the Appurtenances and Premiſſes thereunto belonging, or reputed and taken as Part or Parcel thereof, To and for the Uſes, Intents and Purpoſes hereafter limited, and to and for no other Uſe, Intent or Purpoſe whatſoever; that is to ſay, for the Uſe and Behoof of the ſaid J. L. for and during the Term of his natural Life, without Impeachment of or for any Manner of Waſte, and after his Deceaſe, then to and for the Uſe and Behoof of the firſt Son of the ſaid E. lawfully to be begotten, and to the Uſe and Behoof of the Heirs Male of the Body of ſuch firſt Son, and for Default of ſuch Iſſue (ſo put in the Uſes.)

The Uſes limited to *J. L.* for Life, Remainder to Iſſue Male of *E.*

3. Covenantor's Seiſin.

III. A Seiſin in the Covenantor at the Time of the Deed; for a Man cannot covenant to ſtand ſeiſed to an Uſe, of Land which he ſhall after Purchaſe, or is not then ſeiſed of. 3 *Lev.* 306, 307.

4. An apparent Intent.

IV. A clear and apparent Intent.

5. Apt and proper Words: The Word *Covenant* not neceſſary.

V. Apt and proper Words, *per Finch* Attorney General. 1 *Vent.* 140. He agreed alſo, That the Word *Covenant* is not abſolutely neceſſary, ſo that there be other Words ſufficient in Law, to declare the Party's Intent: For all Words will not ſerve.

The Deed is a good Deed; and Words proper in Conveyances at Common Law will raiſe an Uſe.

The Court, after Arguments on both Sides, adjudged it a good Deed; they all held, that Words proper for a Conveyance at Common Law would raiſe an Uſe; as Demiſe and Grant in Conſideration of Money hath amounted to a Bargain and Sale. And,

As to the Caſe of *Pitfeild* and *Peirce*, 2 *Roll.* 789. where the Father by Deed Poll, in Conſideration of Blood, did give and grant, *&c.* to his Son, *Habendum* to him and the Heirs of his Body, with other Remainders after his Death; Proviſo that the Son ſhall pay the Father a Rent of eight Pounds *per Annum*, during the Father's Life: This, ſays the Book, was adjudged to be void, upon the abſurd Contrivance of the Conveyance, and that no Uſe did ariſe thereupon, nor any Eſtate at Common Law.

And as to *Foſter* and *Foſter*'s Caſe, which ſee in *Raym.* where the Mother by a Deed intitled, *Articles of Agreement*, did demiſe, grant, bargain and ſell Lands to her Son, ſhe quietly enjoying of them during her Life; this was held to be void, for that they were only Articles of Agreement preparatory for what the Party intended afterwards.

And the Court ſaid, That if they ſhould not conſtrue an Uſe to ariſe by ſuch a Conveyance, as in the Caſe at the Bar, which was between *Croſſing* and *Scudamore*, *Vent.* 137. it would overthrow all Conveyances by Leaſe and Releaſe. *Vent.* 142.

This Cauſe was brought by Writ of Error into the *Exchequer-Chamber*, and Judgment affirmed, only *Vaughan* and *Thurland* diſſenting; ſo that it was adjudged by ten of the twelve Judges and Barons.

And confirmed in the Exchequer-Chamber.

*William Lewis* ſeiſed of a Reverſion in Fee, expectant upon an Eſtate for Life, in Conſideration of natural Love and Affection, did give, grant and confirm to his Son all thoſe Lands, and the Reverſion and Reverſions, *&c. Habendum* to the Son and his Heirs, to the Uſe of himſelf for Life, and after to the Uſe of the Grantee (who was his Son) and the Heirs of his Body; and for want of ſuch Iſſue, Remainder to his Daughter in Tail: There was no Execution of this Deed by Attornment or Inrollment, or otherwiſe; and whether this ſhould amount unto a Covenant to ſtand ſeiſed, or be void, was the Point? And adjudged in the *Exchequer*, That it ſhould amount to a Covenant to ſtand ſeiſed; but this Judgment was reverſed by Error in the *Exthequer-Chamber*, and upon a Writ of Error brought into Parliament the Reverſal was affirmed, and they held that no Uſe would ariſe. 2 *Vent*. 319.

*W.* ſeiſed of a Reverſion, on an Eſtate for Life, in Conſideration of natural Love, did give and grant to his Son, *Habendum* to him and his Heirs, to the Uſe of himſelf for Life, then to his Son in Tail, Remainder to his Daughter in Tail; but no Attornment nor Inrollment: It will not amount to a Covenant to ſtand ſeiſed.

**Provided always, and it is hereby declared by and between the ſaid Parties to theſe Preſents; and the ſaid J. L. doth for himſelf and his Heirs, covenant, grant and agree, to and with the ſaid C. and D. and their Heirs, that if it ſhall happen the ſaid E. the Son of the ſaid J. L. to die without Iſſue Male of his Body lawfully begotten, that then the ſaid J. L. Party to theſe Preſents, and his Heirs, ſhall and will ſtand and be ſeiſed of and in the ſaid Meſſuages, &c. to the Uſe, Intent and Purpoſe, that they ſhall and will raiſe and levy out of the Rents, Iſſues and Profits thereof, One thouſand Pounds for each Daughter of the ſaid E. to be paid after the ſame is levied, to the Eldeſt firſt, and ſo in Order.**

Proviſo if E. die without Iſſue Male, then to ſtand ſeiſed to raiſe Daughters Portions.

**Provided, that if the ſaid J. L. ſhall and do at any Time hereafter declare unto the ſaid C. and D. or either of them, that he is intended to alter or revoke any Uſe, Truſt, Clauſe or Limitation, in the Preſents contained, by his Writing indented, by him ſealed and delivered in the Preſence of two or more ſufficient Witneſſes, that then ſuch Addition, Alteration or Revocation by him ſo made ſhall ſtand, and be good and effectual in the Law to all Intents and Purpoſes; any Thing herein contained to the contrary in any wiſe notwithſtanding.** Raym. 279, 280.

Proviſo to revoke.

A Deed with Covenant to levy a Fine.

This Indenture Tripartite, made, &c. between J. B. of the firſt Part, H. J. of the ſecond Part, and E. F. and G. H. (Truſtees) of the third Part, Witneſſeth, that for the Settling of the Meſſuages, Lands, Tenements, and Hereditaments hereafter mentioned, as that the ſame may continue in the Name and Blood of the ſaid J. B. (a) He the ſaid J. B. doth covenant, grant, (b) conclude and agree to and with the ſaid H. J. that he the ſaid J. B. ſhall and will, before the End of Hilary Term next enſuing the Date hereof, acknowledge and levy unto the ſaid H. J. one or more Fine or Fines (ſur Conuſance de Droit come Ceo, &c.) on Acknowledgment of the Right as it is, and ſo forth, with Proclamations thereupon to be had according to the Form of the Statute in that Caſe made and provided*, of and in all thoſe, (&c.) by ſuch Name and Names, Quantities and Qualities, as the ſaid J. B. or his Counſel learned in the Laws ſhall direct; which ſaid Fine or Fines, or any other Fines to be levied between the ſaid Parties, of the ſaid Premiſſes, or any Part thereof, ſhall be and enure,

* Where there was a Covenant upon a good Conſideration to levy a Fine, and it was never done; it was reſolved, That the Covenant did not raiſe any Uſe. 3 *Lev.* 126, 306. *Dy.* 96. Therefore it is uſual to expreſs in ſuch Deeds of Covenant, That if the Conveyances therein contain'd be not executed, that then the Party ſhall from thenceforth ſtand and be ſeiſed, &c.

Feoffment to the Uſe of *A.* for Life, Remainder to B. for Life, Remainder to *C.* in Fee: If *A.* refuſes B. ſhall take preſently.

(a) If a Man make a Feoffment to the Uſe of *A.* for Life, Remainder to *B.* for Life, Remainder to *C.* in Fee; if *A.* refuſes, *B.* ſhall take the Eſtate preſently, becauſe here is a Tranſmutation of Eſtate*: But in a Covenant to raiſe Uſes, the Conſideration, which raiſes every ſeveral Uſe, is alſo ſeveral, and all the Uſes grow out of the Covenantor's Eſtate; and therefore if *A.* refuſes, the next in Remainder ſhall not take preſently, but the Covenantor ſhall retain it. 1 *Rep.* 154. *a. b.* Lord *Paget's* Caſe in the Rector of *Ched.* Caſe.

But on a Covenant to raiſe Uſes, if one refuſe, the next in Remainder ſhall not take preſently; but the Covenantor ſhall retain it.

* So likewiſe in Caſe of a Fine, which is a feoffment upon Record. But ſee where a Fine is demed to be a feoffment upon Record. *Salk.* 340. 1 *Williams* 519.

What are good Conſiderations on Covenants to ſtand ſeiſed.

What Conſiderations are good to raiſe Uſes on Covenants to ſtand ſeiſed, and what not. *Ibid.*

Covenant, in Conſideration of Love and Affection, to ſtand ſeiſed to the Uſe of the Wife for Life, with Power for her to limit over the Eſtate; no Uſe ariſes to the Perſon appointed.

A Covenant, in Conſideration of the Covenantor's Love and Affection to his Wife, to ſtand ſeiſed to the Uſe of himſelf for Life, then to the Uſe of the Wife for Life, with Power for her to limit over the Eſtate to ſuch Perſon, as ſhe ſhould appoint, no Uſe can ariſe to the Perſon appointed. *Fitz-Gib.* 299. *Caſes in Chan. & K.B. from* 4 *to* 7 *Geo.* 2. 107. *S.C.*

No Uſe will ariſe where it appears the Parties intended to paſs an Eſtate by Common Law.

(b) If it appears that the Intent of the Parties was to paſs an Eſtate at Common Law, no Uſe will ariſe; for the Intention of

To the Uſes, as the ſaid *A. B.* ſhall by Deed or laſt Will limit and declare:

entre, and ſhall be adjudged, deemed and taken to be and enure to the Uſes, Intents and Purpoſes, and to ſuch Perſon and Perſons, and for ſuch Eſtate and Eſtates, and ſubiect to ſuch Proviſo's, Charges, Limitations and Agreements, as the ſaid J. B. ſhall, by any Deed or Writing under his Hand and Seal, by him ſigned, ſealed and delivered in the Preſence of two or more credible Witneſſes, or by his laſt Will and Teſtament in Writing, or any Writing purporting his laſt Will and Teſtament, and publiſhed and declared in the Preſence of three or more credible Witneſſes, (a) limit and declare; and for want of ſuch Declaration, Limitation or Appointment, to ſuch

And for want of ſuch Limitation of Uſes,

of the Parties doth rule much in the raiſing of Uſes. 2 *Co. Rep.* 35. *b.*

The Word *Grant* in a Leaſe for a Year will make the Land paſs by the Way of Uſe.

The Reſervation of a Pepper-Corn is a good Conſideration to raiſe an Uſe. *Barker* and *Keat*, 1 *Mod.*

There is no need of actual Entry to make the Leſſee within the Statute of Uſes capable of a Releaſe. 2 *Mod.* 253.

Where the Covenant to levy a Fine is in a Deed of Leaſe and Releaſe, there you muſt ſay *Habendum* to the Releaſee, his Heirs and Aſſigns; to the only Uſe and Behoof of the Releaſee, his Heirs and Aſſigns for ever. *Vide* in the Title *Releaſe* at the End thereof. 1 *And.* 2. 2 *Vent.* 312.

(a) By the Statute of Frauds and Perjuries, 29 *Car.* 2. *cap.* 2. *ſect.* 7. it is enacted, That all Declarations and Creatons of Truſts or Confidences of any Lands, Tenements or Hereditaments, ſhall be manifeſted and proved by ſome Writing ſigned by the Party, who is by Law enabled to declare ſuch Truſt, or elſe to be void.

*Sect.* 8. This leaves reſulting Truſts, and Truſts by Implication as they were before.

*Sect.* 9. That all Grants and Aſſignments of Truſts ſhall be in Writing, ſigned by the Party granting or aſſigning the ſame, or be void.

**4 & 5 *Anna*, All Declarations or Creations of Uſes, Truſts or Confidences, of any Fine or Recovery, by any Deed made after the Levying or Suffering of ſuch Fine or Recovery, ſhall be good.**

The 4 & 5 *Anna*, *cap.* 16. reciting, that whereas it hath been doubted, whether (ſince the making of the Act of Frauds and Perjuries) Declarations or Creations of Truſts or Confidences, of any Fines or Common Recoveries manifeſted by Deed, made after the Levying or Suffering of ſuch Fines or Recoveries are good in Law; It is hereby declared, That all ſuch Declarations or Creations of Uſes, Truſts or Confidences, of any Fines or Recoveries of any Lands, Tenements or Hereditaments, manifeſted and proved, or which ſhall hereafter be manifeſted or proved by any Deed already made, to the Uſe of *A.* B. for his Life,

Remainder to *R.B.* for Life,

and to the Truſtees, during the Life of *R.* B. to preſerve the congent Remainders in Tail.

ſuch Uſes, Intents and Purpoſes as are hereafter limited, declared and appointed, viz. To the Uſe of the ſaid J. B. for and during the Term of his natural Life, without Impeachment of or for any Manner of Waſte; and immediately from and after his Deceaſe, then to the Uſe of R. B. Son of the ſaid J. B. for and during the Term of his natural Life, without Impeachment of or for any Manner of Waſte; and immediately from and after the Forfeiture, or other ſooner Determination of the ſaid Eſtate, to the Uſe of the ſaid E. F. and G. H. (the Truſtees) and their Heirs, for and during the natural Life of the ſaid R. B. upon Truſt, to ſupport the contingent Uſes and Eſtates hereafter limited from being defeated and deſtroyed, and to that Purpoſe to make Entries as the Caſe ſhall require; but nevertheleſs to permit and ſuffer the ſaid R. B. to receive and take the Rents, Iſſues and Profits of the Premiſſes for and during the * Term of

made, or hereafter to be made * by the Party who is by Law enabled to declare ſuch Uſes or Truſts, after the Levying or Suffering of any ſuch Fines or Recoveries, are and ſhall be good and effectual in the Law, as if the ſaid Act had not been made.

Infants ſeiſed of Eſtates in Truſt are enabled to convey.

By the 7 *Ann. cap.* 19. Infants under the Age of 21 Years, ſeiſed of Eſtates in Truſt, are enabled to make Conveyances thereof; or they may be compelled to do it by Order of the Court of *Chancery*, upon Petition *, and hearing the Parties concerned.

Ideots and Lunaticks ſeiſed of Eſtates in Truſt may alſo make Conveyances:

By Order of the Chancery.

And the 4 *Geo.* 2. c. 10. enacts; That Perſons being Ideots, Lunaticks, or *Non compos Mentis*, who are ſeiſed or poſſeſs'd of Eſtates in Fee, or for Lives, or Years, in Truſt, *&c.* may make Conveyances or Aſſignments of ſuch Eſtates, in ſuch Manner as the Lord Chancellor ſhall direct: And Lunaticks being only Truſtees, or their Committees, ſhall and may be compelled by Order of his natural Life; and immediately after his Deceaſe, to the Uſe of the firſt Son of the Body of the ſaid R. B. lawfully begotten, or to be begotten, and the Heirs Male of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, to the ſecond Son in like Manner, and ſo on to the tenth; the Elder of them, and the Heirs Male of his Body, always to be preferred before the Younger of them, and the Heirs Male of his Body to be begotten, as they ſhall happen to be in Priority of Birth and Seniority of Age; and for Default of ſuch Iſſue, then to the Uſe of the ſaid J. B. and the Heirs Male of his Body lawfully begotten, and to be begotten; and for Default of ſuch Iſſue, then to all the Daughters of the Body of the ſaid J. B. lawfully to be begotten, and the Heirs of the Bodies of ſuch Daughters iſſuing; and for Default of ſuch Iſſue, then to the Uſe and Behoof of the ſaid J. B. and his Heirs for ever.

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* *W.* Tenant for Life, Remainder to *J. S.* and his Heirs, for the Life of *W.* Remainder to *W.* and the Heirs Male of his Body, Remainder over; *W.* marries the Demandant in Dower, and dies without Iſſue; and whether his Wife ſhould have Dower or no was the Queſtion, *viz.* If the Remainder to *J.S.* and his Heirs, for the Life of *W.* was ſuch an intervening Eſtate between the Eſtate for Life of *W.* and the Remainder to the Heirs of his Body, that the Wife ſhould not be endowed? And for the Demandant it was ſaid, That all the Eſtate was really in *W.* and the Remainder to *J. S.* for the Life of *W.* was but a Poſſibility; that if *W.* ſhould commit a Forfeiture, *J. S.* ſhould take Advantage thereof for the Preſervation of the Remainders; but in the mean Time all the Eſtate is executed in *W.* as in *Lewis Bowles*'s Caſe, where all the Eſtate was executed in the Father until the Birth of a firſt Son; and altho' by this Poſſibility the Eſtate for the Life of *W.* is not merged, yet the Tail is executed to ſuch Purpoſe, that ſhe ſhall be endowed; but the Court notwithſtanding gave Judgment preſently for the Tenant. 3 *Lev.* 437. 2 *Bacon Abr.* 126.

* *Note*; Or hereafter to be made; for that Reaſon this Act was made.

* But unleſs the Truſt appear in Writing the Court will leave the *Ceſtuy que Truſt* to bring his Bill for a Decree. 2 *Williams* 549.

* A Proviſo of Revocation.

Provided * always (a) and it is herein and hereby agreed by and between the ſaid Parties to theſe Preſents, That it ſhall and may be lawful to and for the ſaid J. B. from Time to Time, and at all Times from henceforth, ſo often as he ſhall think fit, by Deed or Writing under his Hand and Seal, and delivered in the Preſence of two or more credible Witneſſes, or by his laſt Will and Teſtament in Writing, or any Writing purporting his laſt Will and Teſtament, publiſhed and declared in the Preſence of three or more credible Witneſſes, to revoke, alter and change, all and every or any of the Uſes, Eſtate and Eſtates, Truſt or Truſts herein before in theſe Preſents ſpecified or contained; And by the ſaid Deed or Will, or by another Deed (b) or Will ſealed and delivered, or publiſhed and declared as aforeſaid, to limit any new or other Uſe or Uſes, Eſtate or Eſtates, Truſt or Truſts, of the Premiſſes, or any Part there-

By Order of the Chancery.

Order to make ſuch Conveyances.

(a) Uſes and Powers in Contingency and Poſſibility, may by mutual Conſent of the Parties be revoked and determined: For as they may be raiſed by Indenture, ſo by a Proviſo or Limitation annex'd to them in the Indenture, they may be extinct, and deſtroyed either before or after their Eſſence. 18 *Rep.* 87. *a.*

*A.* ſuffers a Recovery to the Uſe of his Will.

(b) *A.* ſuffers a Recovery to the Uſe of his Will; and afterwards by Writing under Hand and Seal declares that his Intent was that the Recoverors and their Heirs ſhould ſtand ſeiſed to the Uſe of himſelf in Tail Male, Remain-

**thereof; any Thing herein before contained to the contrary in (a) any wiſe notwithſtanding.**

Remainder to *B.* in Tail Male, Remainder to his own right Heirs; then he and his Recoverors enfeoff three Perſons in Fee, and limit new Uſes; two of the Feoffees had Notice of the firſt Uſes, the third had not.

then makes a Feoffment, and declares new Uſes:

1. Whether the Uſes limited by *A.* by Writing under his Hand and Seal be revocable or not?

2. What Remedy *B.* hath to revive his Uſe, and reſtore the ſame?

As to the firſt Queſtion, it was held by one Judge, That the Remainder in Tail, limited by the Writing to *B.* cannot be revok'd or chang'd by *A.* and the Recoverors.

The other two Judges were of Opinion, That the ſaid Uſes limited, or the ſaid Writing, were revocable at the Pleaſure of *A.* at all Times, and from Time to Time. *Hob.* 348, 399.

The firſt Uſes are revocable, at the Pleaſure of *A.*

Where new Uſes are declared by the Recoverors in a Recovery, and the Party who ſuffers it, the new Feoffees cannot be ſeiſed but to the new Uſes. But the Feoffees who had Notice of the firſt Uſes are bound to make Recompence for the wrongful Change of the old Uſes; and becauſe it turns to the Benefit of the Recoveror's Eſtate, they ſhall be anſwerable for it. *Hob.* 349.

Tenant in Tail, in Conſideration of his Son's Marriage, covenants to ſtand ſeiſed to Uſes, but afterwards ſuffers a Recovery to other Uſes: The Uſes on the Recovery were adjudged good. *Fareſly* 18. 2 *Salk.* 619.

Recovery ſuffered to other Uſes than covenanted, held good.

(a) Where Powers are to be put in Execution, and to take Effect ſubſequently, to charge the Eſtate of thoſe who claim under the Limitation of Uſes, by the Conveyance, (if you will have an Eſtate take Effect by the Power ſubſequent to any Conveyances at the Common Law,) in ſuch Conveyance, you muſt have theſe Words, *viz.* to take Effect, and nevertheleſs to ſtand charged with the Eſtates; ſo it hath been in all Conveyances, otherwiſe the Power in Conſtruction of Law is to precede the Limitation. *Carter* 111.

Powers to be put in Execution precedent and ſubſequent the Limitation of Uſes.

# CASES

# IN

# *CHANCERY*

# Under all the Titles of Conveyancing.

## Agreements and Articles.

Agreement to the contrary will not prevent Equity.

A Perſon may be relieved in Chancery, although there is an Agreement between the Parties that there ſhall be no Relief in Law or Equity; which ſhall not prevent the Court in it's Juriſdiction. 1 Mod. Rep. 305. 1 Chan. Ca. 141.

Where an Agreement to convey, and an adequate Conſideration paid, binds the Land.

A Perſon agrees for a valuable Conſideration to convey Lands to J. S. and afterwards confeſſes a Judgment to J. N. if the Conſideration Money paid by J. S. be any Ways adequate to the Value of the Land, it binds the Land in Equity, and ſhall defeat the Judgment. Secus of a Mortgage, or if the Conſideration was inadequate. 1 Williams 277.

Where a Perſon ſhall not be obliged to pay his Money purſuant to Articles for a Purchaſe.

If a Perſon articles to buy a Houſe, and the Houſe is burnt down before the Day of Payment, he is not bound to pay the Money, for it is againſt natural Juſtice that any one ſhould pay for a Bargain which he cannot have. 2 Williams 220.

When it is ſufficient, if a Title can be made according to the Agreement to ſell an Eſtate.

Where a Man articles to ſell an Eſtate, and brings a Bill for an Execution of the Agreement, though at the Time of the Agreement he cannot make a Title to the Purchaſor, it is ſufficient if he is able to do ſo when the Decree or Report is made. 2 Williams (631.)

In what Caſe a Marriage Agreement ſhall be executed.

An Agreement or Marriage Articles to convey to the Huſband a third Part of what ſhall come to the Father of the Wife on the Death of his Father is good, and Equity will compel an Execution. 2 Williams 191. Lucas 507. S. C.

Where, in the Caſe of Marriage Articles, Equity will decree a Conveyance in ſtrict Settlement.

In Marriage Articles to ſettle Lands on the Huſband for Life, Remainder to the Heirs or Heirs Male of the Body, a Court of Equity will decree the Conveyance to be made in ſtrict Settlement, according to the Intent of the Parties, (viz.) to the Huſband for Life, Remainder to the firſt and every other Son in Tail, &c. and not direct an Eſtate Tail to the Huſband, according to the legal Operation of the Words. 1 Williams 106, 143, 291, 622.

An Agreement may be good, tho' the Conſideration is unequal: Not if unreaſonable.

On Sale of a Leaſe by the Plaintiff for ſo much Money, a ſecond Agreement of the Defendant concerning the ſame to reconvey, &c. was decreed to be good, tho' the Conſideration was unequal (a); And it was inſiſted, that this Caſe was in Nature of a Wager, on which an Action at Law properly lay. Parker verſ. Palmer, 1 Chan. Caſ. 42.

(a) But unreaſonable Agreements have been ſet aſide in Equity. 2 *Vern. Chan. Rep.* 186. So alſo underhand Agreements, to defeat Articles, *&c.* 1 *Vern. Rep.* 240, 475. 1 *Williams* 121, 496, 768, 118. *Lucas* 445. *Eq. Abr.* 88, 89.

Where a Miſtaken Agreement is binding in Equity.

An Agreement was under the Party's Hand; And it was held, that the Agreement of the Party conceiv'd upon a Miſtake, as that he had not a Title to permit another to enjoy Lands, when in Truth he had, ſhall for ever bind him; and yet this Agreement appear'd to be upon no valuable Conſideration. Frank's Caſe, 1 Chan. Caſ. 85, 86. See Hardr. 200, 204.

Agreement, if ſigned but by one Party, hath been held good.

The Plaintiff ſold Houſes to the Defendant for a Sum of Money, and made a Note of the Agreement, which was ſigned by the Defendant, but not by him: It was objected, that the Agreement did not bind the Party who ſigned it not, for The Statute of Frauds and Perjuries, &c. and therefore in Equity it could not bind the other; for both muſt be bound, or neither of them: But the Agreement was decreed good. Hutton and Gray, 2 Chan. Caſ. 164.

How, if not ſigned, Marriage Propoſals an Agreement.

An Agreement of Marriage reduc'd into Writing, tho' not ſign'd by either Party; It being proved that the Articles were agreed to, the ſame was decreed to be perform'd. 2 Vern. Rep. 200. See Finch's Rep. 147.

Agreement in Writing diſcharg'd by Parol.

Since the Statute of Frauds, an Agreement in Writing has been diſcharg'd by Parol in Equity. 1 Vern. 240.

Where an additional parol Agreement was referred to Law, ſee 2 Chan. Caſ. 143.

What is not a Signing, ſo as to take it out of the Statute of Frauds.

If a Man agrees to purchaſe a Houſe, and a Draught is made of the Conveyance, and he alters it with his own Hand, yet this is not ſuch a Signing ſo as to take it out of The Statute of Frauds and Perjuries, tho' the Vendors afterwards executed the Conveyance, and cauſed it to be regiſter'd. 1 Williams 770.

Agreement in Part executed not within the Statute, but ſhall be carried into Execution.

If A. agrees to ſell the Lands in Queſtion to B. and a ſhort Note is drawn of the Agreement (but not ſigned by either Party) purporting amongſt other Things, that B. ſhould have the Lands from Lady-Day next, and ſhould then pay the Purchaſe Money, and Poſſeſſion is delivered to B. who thereupon puts in his Cattle, and makes Incroachments on A.'s other Lands, by which ſome Differences aroſe, which to remove A. deſires B. to repeal the Bargain, which he refuſed; upon which A. ſells the Lands to C. who had Notice, B. having tender'd the Money and Conveyances the 26th of March following, he will be decreed the Lands; this Agreement being in part executed, and therefore not within the Statute. 1 Vern. 363. 2 Vern. 455. S. C.

Agreement by parol where within the Statute.

A. and B. being ſeverally in Treaty to purchaſe a Houſe and Toft of Ground of J. S. they agree by Parol that A. ſhall deſiſt, and that B. ſhall purchaſe and let A. have Part of the Ground, which he wanted, at a proportionable Price. B. purchaſes, but refuſes to perform the Agreement. The Maſter of the Rolls held this was out of the Statute, being in Part executed by A.'s deſiſting; but upon Appeal my Lord Chancellor reverſed the Decree, and adjudged it to be within the Proviſion of the Statute. 2 Vern. 627.

Where a parol Agreement ſhall be ſpecifically executed.

If there be a parol Agreement for the Purchaſe of Lands, and a Bill brought for a ſpecifick Execution thereof, and the Subſtance of the Agreement is ſet forth in the Bill, and confeſſed by the Defendant's Anſwer, in ſuch Caſe the Court will decree a ſpecifick Execution, becauſe there is no Danger of Perjury, which was the principal Thing the Statute intended to prevent. Eq. Ca. Abr. 19. Mod. Ca. in Law and Eq. 86.

Aſſign-

# Aſſignments.

Aſſignees not bound by perſonal Covenant.

By no Rule of Law or Precedent of the Court of Chancery is an Aſſignee of Land bound by the perſonal Covenant of the Aſſignor, where the Land is not bound. 2 Chan. Caſ. 90.

An Aſſignee of a Leaſe aſſigns, he is liable for Rent due before Aſſignment.

An Aſſignee of a Leaſe rendring Rent, after he had enjoy'd the Land ſix Years, made an Aſſignment over of his Term; and on a Bill brought againſt him to account for the Rent, for ſuch Time as he held the (a) Land, It was decreed, that he ſhould be chargeable for ſuch Time as he received the Profits. Treckle and Coke, 1 Vern. Rep. 165.

Aſſignee of a Mortgagor was obliged to pay the Rent, tho' he never entered.

A Leaſe for Years, ſubject to a Ground Rent, was aſſign'd by Way of Mortgage to the Plaintiff; who never enter'd nor took Poſſeſſion, and ſo loſt the Mortgage-Money: But nevertheleſs, the Defendant recovered the Rent reſerv'd againſt the Aſſignee; and tho' it was a hard Caſe (b), no Relief could be had in Equity, by reaſon of the Aſſignment of the whole Term. Pilkington's Caſe, 2 Vern. 374.

Where an Aſſignee of the Leſſor, having Notice of a Covenant with the Leſſee, ſhall be obliged to make it good.

If a Leſſee of a College makes an Under-Leaſe, and covenants with his Leſſee that he would renew his Leaſe, and adds a further Term of three Years to his Leaſe, and he renews the Leaſe; but inſtead of adding the three Years he aſſigns it to J. S. J. S. having

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(a) In Strictneſs of Law, there was no Privity of Contract to charge the Aſſignee. But an Aſſignee cannot by aſſigning his Intereſt diſcharge himſelf of the Rent without tendring the Arrears, and giving Notice of the Aſſignment, for till then he is liable in an Action of Debt. 1 *Lev.* 215. So in an Action of Covenant likewiſe for the Rent due before the Aſſignment. 1 *Salk.* 81. But for Rent which became due after the Aſſignment he is not liable, though he does not give Notice of the Aſſignment. 1 *Salk.* 81. 2 *Vent.* 228.

(b) If the Plaintiff had taken only an under-derivative Leaſe, he would not have been liable to the Rent on the firſt Leaſe. *Per Cur.*

Notice of the Covenant will be obliged to add the three Years. Nel. Chan. Rep. 212.

So in the Caſe of a Purchaſor of the Inheritance.

So if A. makes a Leaſe for three Years, and, in Conſideration of the Leſſee's laying out 100 l. in Improvements, covenants to grant a new Leaſe at the End of the Term at the ſame Rent, the Purchaſor of the Inheritance ſhall make good this Covenant. 2 Vern. 447.

Leſſee covenants to repair, his Under-leſſee is not bound, but the original Leſſor muſt have his Remedy againſt Leſſee's Executors; *ſecus* if the Executors are inſolvent.

If a Leſſee for Years, who is bound by a Covenant to repair, makes an Under-Leaſe in Truſt for J. S. and the Leſſee is dead, and the Premiſſes out of Repair, yet the Leſſor ſhall not compel J. S. in Equity to repair, unleſs the Executors of the firſt Leſſee are inſolvent; for though the Privity of Eſtate is deſtroyed in Law, yet he ſhall not have Recourſe to this Remedy whilſt he has any left againſt the Executors of the firſt Leſſee. 2 Vern. 87.

Deviſee in Remainder of a Term articles to ſell, this is a good Aſſignment in Equity.

A Deviſee in Remainder of a Term articles for a valuable Conſideration to ſell it, this is a good Aſſignment in Equity, and the Deviſee in Remainder is afterwards but a Truſtee for the Purchaſor. 1 Williams 574.

How Things in Action are aſſignable in Equity.

By a Settlement of Lands, a Sum of Money was provided to be raiſed for Daughters Portions; One of the Daughters married and died before her Portion was paid, upon which the Huſband takes Adminiſtration to her, and by Aſſignment he aſſign'd all his Intereſt in that Portion to his Son by a former Wife: The Son by this Title, after his Father's Death, ſued in Equity for this Money; and it was inſiſted for the Defendant, That though Things in Action might be aſſign'd in Equity, on a Conſideration paid by the Party who had the Intereſt, and were recoverable here by the Aſſignee; yet in this Caſe the Aſſignment being by an Adminiſtrator, and not the Perſon who had it in his own Right, this had never been allowed good.

Difference between Aſſignment of the Party and an Adminiſtrator.

Lord Keeper: There is a great Difference between the Aſſignment of the Party and of the Adminiſtrator, where the Adminiſtrator was a Stranger, and had no Right but meerly by the Adminiſtration: But here the Adminiſtration was pro forma only, and the Adminiſtrator had a Right to the Money as a Portion or Proviſion for his Wife; and it was diſpoſable by the Huſband as other Money. And decreed for the Plaintiff. 1 Chan. Caſ. 169, 170.

A Poſſibility cannot be aſſigned in Equity.

J. S. by Deed directs and appoints, That his Truſtees, after his and his Wife's Deceaſe, ſhould aſſign the Reſidue of a Term to his Wife's Daughter, when ſhe ſhould attain the Age of twenty-one Years, or be married after the Death of her Father and Mother. The Daughter being married, ſhe and her Husband in the Life-time of the Father and Mother made an Aſſignment of the Term: And the Queſtion was, Whether ſuch a Poſſibility could be aſſigned in Equity? The Lord Keeper ſaid, That which is the Rule of Law muſt be the Rule here, a Poſſibility is not aſſignable. 2 Vern. Rep. 563.

May be releas'd.

But though a Poſſibility cannot be aſſign'd, the Law allows it may be releaſed; for 'tis unreaſonable there ſhould be an Incumbrance on a Man's Eſtate, that can no Way be diſcharg'd. Ibid.

Choſe in Action aſſignable in Equity.

Aſſignment of a contingent Intereſt or a Poſſibility, though not ſtrictly good by Aſſignment, yet will operate as an Agreement.

Altho' a Choſe in Action is not aſſignable at Law, yet it is ſo in Equity, where the Husband may aſſign it alone, as he may any other Part of the Wife's perſonal Eſtate ſo may a contingent Intereſt which the Husband has in Right of his Wife, or a Poſſibility of a Term, which though not good ſtrictly by Way of Aſſignment, yet will operate as an Agreement where for a valuable Conſideration. 2 Williams (608.)

Grant of a future Poſſibility, tho' not good in Law, yet a Poſſibility of a Truſt in Equity may be good.

A. poſſeſſed of a Term ſettles it in Truſt to the Uſe of himſelf and his Wife for Life, Remainder to the Uſe of ſuch Iſſue of the Husband and Wife as he ſhould by Will appoint; he by Will ſettles it on B. his Son, who in the Life-time of his Mother aſſigns and releaſes it to C. to whom the Truſtees likewiſe aſſign their Intereſt; and it was held by the Court, with the Advice of the Judges, that though a Grant of a future Poſſibility is not good in Law, yet a Poſſibility of a Truſt in Equity may be good; and that it was the rather ſo in this Caſe becauſe the Truſtees joined in it. 1 Chan. Rep. 29.

# Bargain and Sale.

Bargain and Sale in Time of Neceſſity ſet aſide.

It has been decreed in Chancery, That a Bargain and Sale of Lands, &c. of exceſſive Advantage, gain'd from a young Heir by Extremity and in his Neceſſity, ſhall be ſet aſide; and that although the Bargain be of his own Seeking, and hazardous to the Bargainor. In this Caſe the Defendant was to have * five Times the Value of his Money in Land; which was a very unconſcionable Bargain. 2 Chan. Caſ. 120, 121.

An Heir ſelling Land in the Life of his Anceſtor, when it is good.

An Heir apparent ſold Land in his Father's Life-time, and received the Purchaſe-Money for the ſame; he ſhall be bound to make good the Sale, after his Father's Death, if he hath no Title but as Heir when he comes to be Owner of the Lands he ſold: But here the Money raiſed on the Sale was imployed for the Benefit of the Family; and the Father was abſent beyond the Sea, &c. Duke of Newcaſtle's Caſe. 2 Chan. Caſe 113.

If he ſells a Reverſion at an Under-value, the Court will not decree Performance of Covenants;

H. bought of the Defendant N. in the Life of his Father, the Reverſion of a Houſe at an Under-value, by Reaſon of the Contingency, That if N. had died in his Father's Life-time, the Plaintiff had loſt all his Purchaſe-Money: On the Death of the Defendant's Father, who died about ten Years after this Conveyance was made, N. exhibited his Bill to be relieved againſt the Bargain, and was reliev'd by the Lord Nottingham; but upon a Re-hearing before the Lord Keeper Guilford that Decree was revers'd: And now a Bill was brought by the Executor of H. to compel N. to perform a Covenant to make further Aſſurance; but he was denied Relief therein, and the Plaintiff left to bring his Action of Covenant at Law. Hill verſus Nott, 1 Vern. Rep. 271, 272.

nor confirm the Bargain: Decree reverſed.

The above principal Cauſe being afterwards again re-heard before the Lord Chancellor Jefferies, he reverſed

Lord

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* By the *Civil Law*, a Bargain of double the Value ſhall be avoided.

Lord Guildford's Decree, and confirm'd the Decree of Lord Nottingham; declaring he took Hill's Purchaſe to be an unrighteous Bargain in the Beginning; and nothing that happened afterwards could help it. 1 Vern. 168. 2 Vern. 27. 2 Chan. Caſ. 137.

Where the Sale of a Reverſion by a Son in his Father's Life-time was relieved againſt.

A. was Tenant for Life, Remainder to B. his Son in Tail, Remainder over, B. the Son, being in Debt, was deſirous to ſell his Reverſion to his Father, who propoſed a Sum for that Purpoſe; but C. who had been an Attorney (though had left off practiſing for ſome Time) diſſuaded the Son from it, declaring that this was no valuable Conſideration. But in about a Year afterwards, when the Father was ancient and ſickly, C. himſelf bought this Reverſion of B. for 1050 l. when the Eſtate was worth 150 l. per Ann. and B. was at this Time thirty-four Years of Age, and had a Child about ten Years old, who was inheritable to the Intail, and B. levied a Fine of this Reverſion to C. In about two Years Time A. the Father died. B. brought his Bill to ſet aſide this Conveyance, and in order to gain an Injunction, by the Direction of the Court ſuffered a common Recovery, and declared the Uſes of it to the two ſenior Six Clerks, ſubject to the Order of the Court. Upon the Hearing of the Cauſe Lord Chancellor decreed Relief upon Payment of Principal and Intereſt, and full (meaning liberal) Coſts, grounding his Opinion chiefly upon the Caſe of Berney and Pitt in 2 Vern. 14. 1 Williams 310.

Sale by a Lunatick avoided.

A Sale at Under-value from one who was a Lunatick, was ſet aſide; but the Conveyances decreed to ſtand as a Security for what was paid for the Lunatick's Uſe. 2 Vern. Rep. 678. Vide 2 Vern. 414. That a Settlement made by a Lunatick, though not unreaſonable, ſhall be ſet aſide. Vide, where a Conveyance from a Perſon weak in his Underſtanding was ſet aſide, 2 Vern. 189.

# Bonds.

The Obligor's Name left out of a Bond.

AN Accident or Fraud, in the Writing of a Bond, hath been relieved in Equity; As when the Writer had left out the Name of one of the Obligors, but his Hand and Seal was to the Bond. 3 Chan. Rep. 100.

If a Bond be taken away or loſt, Remedy in Equity.

If a Bond be taken away fraudulently and cancell'd, the Obligee ſhall have the ſame Benefit thereby as if it had not been cancell'd. Finch's Rep. 184. So where an Obligee loſeth his Bond, he ſhall have his Remedy againſt the Obligor in Equity: * And when a Bond is loſt, the Money may be recovered of the Surety; on Proof that he had ſealed and enter'd into the Bond. 1 Chan. Caſ. 77, 78.

* *Quære*; For theſe Matters are diſcretionary. *Eq. Abr.* 93.

Voluntary Bond for the Payment of an Annuity being loſt, decreed, that either the Annuity or Penalty ſhould be paid.

J. S. a little before his Death entered into a voluntary Bond to his Houſe-keeper for the Payment of an Annuity of 30 l. a Year, and the Bond being loſt, his Repreſentatives were decreed to pay the Annuity, or the Penalty of the Bond, though it appeared there were no Wages due to her. Eq. Abr. 93.

But when it ſhall be preſumed paid, as after twenty Years, &c.

Upon a Bond, if neither the Principal nor Intereſt hath been demanded in twenty or thirty Years, it will be preſumed in Equity that the Bond is ſatisfied: and a perpetual Injunction hath been granted to ſtay all Proceedings on ſuch Bonds. 1 Ch. Rep. 78. Finch's Rep. 78.

Where, tho' the Conſideration of a Bond fails, yet if the Party may have full Benefit, tho' not purſuant to the Terms of the Agreement, he ſhall have no Relief.

If Leſſee aſſigns his Leaſe, and the Aſſignee in Conſideration of ſuch Aſſignment gives him a Bond of 300 l. conditioned to pay him 20 l. a Year, and the Rent to the Leſſor, and the Aſſignee ſuggeſts, that the Leaſe being forfeited (as in Truth it was) there is no Conſideration; yet if the Aſſignee may have the full Benefit of his Agreement, as he had in this Caſe by the Leſſor's not taking Advantage of the Forfeiture, he ſhall have no Relief. Nel. Chan. Rep. 49.

No Relief againſt a Bond given for a Surrender of a Commiſſion in the Army, tho' the Obligor cannot get himſelf admitted.

If an Officer in the Army agrees to ſurrender his Commiſſion to J. S. in Conſideration of 100 l. for which a Bond is given, and he ſurrenders accordingly, and

J. S. cannot get himſelf admitted, yet J. S. ſhall not have Relief againſt this Bond, ſave only againſt Intereſt and Coſts. 1 Vern. 98.

Money payable by Bond may be moderated, and leſs paid.

Bond was enter'd into, conditioned for the Payment of 40 l. per Annum, for twelve Years, out of the Profits of an Office: The Office was taken away on Oliver Cromwel's Uſurpation, during the Civil Wars; and the Obligor being ſued on the Bond, he exhibited his Bill in Chancery to be relieved againſt it: And the Obligee inſiſted, That the Office continued ſome Part of the twelve Years, and was now revived, &c. It was decreed, That the Obligor ſhould pay the 40 l. per Annum, for ſo many Years as the Office continued (a), and thereupon the Bond to be delivered up. Lawrence's Caſe, 1 Chanc. Ca. 72.

Upon a Bond for Performance of Covenants, &c. the Obligee ſhall recover no more in Equity, than he is really dammified by the Breach of Covenants: But in an Action at Law, the whole Penalty of the Bond ſhall be recovered from the Obligor. 2 Chan. Rep. 199.

No more than the Penalty ſhall be recovered in Equity on a Bond.

Chancery gives Relief againſt the Penalty of a Bond; and though the Principal and Intereſt exceed the Penalty, yet the Obligee ſhall not recover beyond the Penalty. Brigadier Villars having borrowed Five hundred Pounds of a Perſon, upon Bond and Judgment, the Bond was of One thouſand Pounds Penalty, and the Debt and Intereſt much exceeded that Sum: On a Bill to be relieved, the Lord Keeper was of Opinion, That the Defendant ſhould have in the Whole no more than the Penalty of the Bond; ſaying, A Man can have no more than his Debt, and the Penalty is the utmoſt of the Debt. 2 Vern. Rep. 509.

If the Vendor of Lands enters into a Recognizance of 1000 l. Penalty for the quiet Enjoyment of the Vendee, though the Loſs the Vendee ſuſtains by having the Land evicted be much greater, yet the Court will not go beyond the Penalty. 1 Chan. Rep. 95.

So where there was a Settlement or Deviſe for Payment of Debts, and there was a Bond-Debt due, the Intereſt of which had out-run the Penalty, altho' ſuch Conveyances for Payment of Debts are favourably conſtrued, yet the Creditor on a Bill brought by him could not have more than the Penalty; 1 Salk. 154. decreed. For note, That where an Obligee is Plaintiff, a Court of Equity will not carry the Debt beyond the Penalty, becauſe he has choſen his own Security; but it is otherwiſe as to the Obligor, for he who ſeeks Equity from him muſt do it to him. Eq. Abr. 92. And therefore,

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(a) This Caſe is founded on that general Rule, That Equity relieves againſt Accidents, and likewiſe againſt Force as well as Frauds. *Ibid.* 74, 83, 133.

*Secus*, if the Obligor is Plaintiff and not the Obligee.

If Lands are extended on a Statute or Judgment at much leſs than the real Value, and the Conuſor will come into Equity to make the Conuſee account according to the real Value, he ſhall not be relieved without paying the Conuſee all that is due to him for Principal, Intereſt and Coſts, though they exceed the Penalty. 1 Vern. 350. So if the Obligee be delayed by Injunction.

So where the Plaintiff came to be relieved againſt the Penalty of a Bond, though it was ſo decreed, yet it was on the Payment of Principal, Intereſt and Coſts; and though they exceeded the Penalty, yet the Decree was affirmed in the Houſe of Peers. Show. P. C. 15. See Eq. Abr. 92.

A Bond extinguiſhed at Law.

If a Bond be conditioned to do an Act at the Requeſt of the Obligee, and the Obligee dies without making any Requeſt, the Bond is extinguiſhed at Law: ſo where the Obligor is made Adminiſtrator or Executor to the Obligee. But Vide for this 2 Bacon's Abr. 379, 380.

But a Bond extinguiſhed at Law, good in Equity.

A Bond was given to the Wife by the intended Huſband before Marriage, to leave her 1000 l. if ſhe ſurvived him; though this Bond was extinguiſhed and releaſed at Law by the Marriage, yet it is good in Equity*; and it was decreed, that the Wife after her Huſband's Death ſhould be admitted as a Bond-Creditor to redeem a Mortgage and hold over his Eſtate, until ſhe ſhould be ſatisfied what ſhe ſhould pay for the Redemption, and alſo the Bond-Debt. 2 Vern. 481.

A Bond to compel Marriage is void, tho' drawn in common Form.

The Bill was to be relieved againſt a Bond drawn in Common Form for Payment of Money; but proved to be made on an Agreement, that the Plaintiff ſhould either marry ſuch a Perſon, or by Way of Forfeiture pay the Defendant the Sum mentioned in the Condition of the Bond. Upon Debating the Matter the Court relieved againſt this Bond, it being contrary to the Nature of Marriage, which ought to be free and without Compulſion. Key and Bradſhaw's Caſe, 2 Vern. 102. So if A. being a Widow gives a Bond to B. of 100 l. if ſhe marry again, and B. gives a Bond to the Widow to pay her Executors the like Sum, if ſhe ſhould not marry again, and the Widow ſoon after marries, her Bond ſhall be delivered up. 2 Vern. 215.

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* See how far Equity will ſupport ſuch Contracts, 1 *Chan. Ca.* 21, 117. 1 *Vern.* 408. 2 *Vent.* 343. 2 *Vern.* 290. *Precedents in Chan.* 237.

Bond to a Miſtreſs, &c. for ſecret Service, held good.

Bond to a Houſe-keeper for ſecret Service; a Bill to be relieved againſt it was diſmiſſed: Equity will not relieve in theſe Caſes, unleſs it appear that the Woman, to whom the Bond is given, be a common Strumpet, and uſed to draw in young Gentlemen, &c. which muſt be charged in the Plaintiff's Bill. And if a Man gives Bond to a Woman, whom he keeps for a Miſtreſs, for Payment of a Sum of Money; this will be taken to be a free Gift, and no Relief can be had againſt the Bond. 2 Vern. Rep. 242. 1 Vern. 483, 484. Vide 2 Vern. 187. Where it is ſaid, that though the Court may refuſe Relief when the Party who is culpable makes his Application, yet it is otherwiſe when his Executors ſue.

A. having ſeduced an innocent Woman, and having had a Baſtard by her, gives her a Bond of 4000l. Penalty, conditioned to pay her 2000l. within three Months after his Death; and ſometime after he executed a Deed, whereby he agreed either to pay the 2000l. or to lay it out in an Annuity, and ſettle it on her and her Child. A. dies, Equity will compel a Performance of this Agreement. Eq. Abr. 87. 2 Williams 432.

Recognizance by Tenant in Tail not to ſuffer a Recovery, decreed to be delivered up.

If Tenant in Tail enters into a Recognizance not to ſuffer a Recovery, ſuch Recognizance ſhall be delivered up as creating a Perpetuity. Moor 809.

So where he gives Bond not to commit Waſte, the Bond relieved againſt.

So if one ſettles his Land upon his Daughter in Tail, and takes a Bond from her not to commit Waſte, and the Daughter levies a Fine and commits Waſte, and the Bond is put in Suit, yet Equity will relieve againſt it. 2 Vern. 251.

But a Bond from the Son to the Father, to reſtrain docking the Entail, held good.

But where a Father ſettles Lands upon his Son in Tail, and takes Bond from him, that he ſhould not dock the Entail: A Bill is brought to be relieved againſt this Bond. Per Cur. The Bond, is good; for had not the Son agreed to give the Bond, the Father might have made him only Tenant for Life. Freeman v. Freeman, 2 Vern. 233.

A Son in plentiful Circumſtances gives his Father a Bond to pay him 120l. Annuity for his Life, this, if done freely and without Coertion, is good. 1 Williams 607.

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Condi-

# Conditions.

Infants are bound by Conditions.

A Perſon gives Money to an Infant, upon a Condition to be performed; the Infant is bound by it as well as one at full Age, and may be a Truſtee. 2 Vern. Rep. 561.

An Infant ſhall be bound by Conditions in Fact, and ſuch Conditions as he can perform in Equity as well as in Law. 1 Mod. 300. 2 Vern. 343. 1 Inſt. 233. b.

Conditions precedent and ſubſequent, how performed.

Conditions precedent muſt be literally performed; and Equity will rarely give Relief in caſe of precedent Conditions, as it often doth in Caſes of Conditions ſubſequent; which not being favoured, becauſe they go in Defeazance of Eſtates, this Court may relieve, if performed in the ſubſtantial Part (a), though ſome of the Circumſtances are not purſued. 3 Chan. Caſ. 130.

What is a Condition precedent.

One by Will gives an Annuity to his Grand-Daughter for Life, and afterwards by a Codicil to his Will declares, that if his Grand-daughter ſhall marry with the good Liking of his Truſtees, then ſhe ſhall have a Portion. She marries without Conſent a Man worth nothing, the Husband is not intitled to the Money, the Condition (viz.) if ſhe ſhall marry with the good Liking, &c. being a Condition precedent to the Gift of the Portion. 1 Williams 285. See Eq. Ca. Abr. 107 to 113.

A. having a Niece an Infant, deviſes to her the Surplus of his perſonal Eſtate, payable at twenty-one, and if ſhe die before twenty-one, the Surplus to go over. The Deviſe over is a Condition precedent, and the Niece ſhall have the Intereſt paid her in the mean Time. 2 Williams 419.

What a Condition ſubſequent.

A. deviſes the Reſidue of his perſonal Eſtate to J. S. provided ſhe marries with the Conſent of his two Executors; on the Death of one the Condition being a ſubſequent one is become impoſſible, and ſhe may mar-

(a) It is ſufficient if the Intent and Subſtance of theſe Conditions be performed. 1 *Vern.* 83.

ry without the Conſent of the Survivor. 2 Williams (626).

Relief is given in Equity againſt Conditions ſubſequent, and in Caſes where Compenſataion made.

The Court of Chancery relieves againſt Breaches of Conditions, &c. But not againſt the Breach of a Condition precedent: It will relieve to prevent the Deveſting of an Eſtate; though not to give an Eſtate that never veſted by Reaſon of the Non-performance of a precedent Condition. Yet in all Caſes where the Matter of a Condition lies in Compenſation be the Condition precedent or ſubſequent, there ought to be Relief in Equity. 2 Vern. Rep. 339. 1 Vern. 223.

And no Advantage ſhall be taken of a Penalty or Forfeiture.

In a Caſe the Queſtion was, Whether Relief might be given for the Breach of a Condition on Non-payment at the Day, &c. there being no Damage but what might be made up by Payment after with Damages: It was decreed that Relief ſhould be had. And it is now a general Rule of Equity, that no Advantage ſhall be taken of a Penalty or Forfeiture, where a Compenſation may be made. 1 Chan. Caſ. 141. Max. Eq. 44, 45, &c.

Equity will relieve, where it can give Satisfaction for the Breach of a Condition.

If a Man deviſes Lands to J. S. upon Condition to pay 20000 l. to his Heir at Law, (viz.) 1000 l. per Ann. for the firſt fifteen Years, and 2000 l. per Ann. after till the Whole ſhould be paid, and the Heir enters for Non-payment of one of the 1000 l. per Ann. J. S. ſhall be relieved upon Payment of the 1000 l. together with Intereſt from the Time it became payable, without any Deduction for Taxes; the Court declaring, that whereever they can give Satiſfaction or Compenſation for the Breach of a Condition they can relieve. 1 Salk. 156. 2 Vern. 594. S. C.

Mortgage at 6 *l. per Cent.* with a Proviſo to take 5 *l.* if paid within three Months, no Relief if there is a great Arrear.

One makes a Mortgage at Six per Cent. with Proviſo to take Five if paid within three Months after. If there is a great Arrear, the Court will not relieve. Secus if but a ſmall Slip of Time. 1 Williams 652.

On Breach of a Condition, the Time of Payment of the Money may be enlarged.

Lands were ſettled by a Man on Truſtees to ſuch Uſes as he by Deed or Will ſhould appoint; and by his Will he deviſed his Eſtate to his eldeſt Daughter, upon Condition, that ſhe within ſix Months after his Death paid certain Sums to her other Siſters; and if ſhe failed, then he gave the Lands to his ſecond Daughter on the like Condition, &c. The Plaintiff failed in Payment of the Money within the Time limited, and was reliev'd. Per Cur. The Court may inlarge the Time of Payment, altho' the Premiſſes are deviſed over; and even in the Caſe of a Condition precedent. 2 Vern. Rep. 222.

Upon Payment of Principal, Intereſt and Coſts, Relief againſt a Condition.

E. R. deviſed his real Eſtate to his Kinſman Sir R. R. paying 1000 l. a-piece to his two Daughters, and Heirs at Law; Sir R. R. makes Default in Payment, and the Daughters bring Ejectment, and recover the Lands; then the Plaintiff claiming under Sir R. R. brought his Bill to be reliev'd, and obtained a Decree for that Purpoſe, paying what remained unpaid of the 2000 l. with Intereſt and Coſts. Againſt this Decree it was objected, that Sir R. R. claiming only as a voluntary Deviſee, Equity ought not to aſſiſt him againſt the Breach of the Condition, whereby to eſtabliſh a Diſinheriſon of the Heir; but that he ought at his Peril to have taken Care to have performed the ſame, or the Law ſhould take Place. Sed non allocatur. Barnardiſton's Caſe, 2 Vern. 366.

Condition in a Will, not to marry without Conſent, how conſtrued in Equity.

The Lady Anne Knowls had deviſed to her by the Earl of N. Newport Houſe, and other Tenements in the County of Middleſex, to her and the Heirs of her Body begotten, upon Condition, That ſhe married with the Conſent of his Wife, and of certain Truſtees: And if ſhe married without their Conſent, or died without Iſſue of her Body, then the Premiſſes were given over to G. P. and to his Heirs for ever. The Lady Anne married without ſuch Conſent, but afterwards the Truſtees aſſented thereto: And now a Bill was brought to be relieved againſt the Condition, and the Breach of it: It was held, that this was a conditional Limitation, and not relievable in Equity; nor ſhall the ſubſequent Aſſent ſupply the Want of Conſent precedent, for after the Marriage Conſent ſignifies no more in this Caſe.

When Equity will not interpoſe.

The Lord Keeper declared he was clear of Opinion, That Equity ought not to interpoſe in this Caſe; and was glad to ſee, that a Parent could ſettle his Eſtate, that it might be out of the Power of a Court of Equity; and ſo diſmiſſed the Bill. 1 Chan. Caſ. 138, 141, 143, 144. 1 Mod. 300. 2 Chan. Rep. 26.

Where the Legacy is limited over, there is no Relief on Breach of the Condition;

A Teſtator by Will deviſed a Legacy of 2000 l. to his Daughter; but if ſhe ſhould marry one B. that then the Legacy ſhould be void: The Daughter having married B. contrary to the Will, her Brother pays her 800 l. and ſhe releaſes the Legacy; but afterwards brings a Bill to ſet aſide the Releaſe, and have her Legacy made good to her. It was decreed by the Lord Chancellor againſt the Plaintiff; ſaying, that where a Legacy is given to a Woman, upon Condition ſhe marry with Conſent of J. S. if the Legacy be not limited over, it is only otherwiſe 'tis only *in Terrorem.*

only in Terrorem, and though ſhe marry without Conſent, it doth not avoid the Legacy: But here in this Caſe the Father had revoked the Legacy, and ſhe was only prohibited to marry with one Man by Name. Jervois verſus Duke, 1 Vern. Rep. 19, 20.

Legacy to B. and if ſhe married under twenty-one, without Conſent, then over; if there is a tacit Conſent to B.'s Marriage, B. ſhall be intitled to her Legacy.

A. deviſed 300l. to B. her Daughter, and that if ſhe married under twenty-one, without Conſent of the Executors, or major Part of them, the Legacy to go to the Children of her Siſter, the Wife of C. and made C. and two others Executors; B. being at the Houſe of C. there marries his Son by a former Wife, with his Privity, being under twenty-one; B. and her Husband bring a Bill for the Legacy; C. in Favour of his other Children, inſiſts that the Legacy is forfeited. The other Executors confeſſed they had Notice of the Courtſhip, and did not contradict or diſapprove of it; and the 300l. was decreed the Plaintiffs, there being at leaſt a tacit Conſent. 2 Vern. 580.

What Clauſe ſhall be conſtrued more than *in Terrorem*; and where the Deviſe of the Surplus of the perſonal Eſtate is a Deviſe over.

A. deviſed to his Daughter M. the Plaintiff 100l. to be paid by his Executors upon her Day of Marriage, or Age of twenty-five, which ſhould firſt happen, upon Condition that ſhe ſhould marry with the Conſent of ſuch and ſuch Perſons; and if ſhe married without their Conſent, then to have 50l. only, and no more, and gave the Reſidue of his perſonal Eſtate to the Defendants. M. married the Plaintiff without ſuch Conſent before twenty-one; and it was held by the Maſter of the Rolls, that this was more than a Clauſe in Terrorem, and that the Deviſe of the Surplus of the perſonal Eſtate was a Deviſe over of the 50l. on M.'s Diſobedience. Eq. Abr. 112.

Where a Condition, not to marry without Conſent, ſhall be carried no farther than the Daughter's Minority.

Defendant's Father deviſed to him, who was his Heir at Law, all his Lands, &c. except, &c. charged with a Sum of Money to his Daughter at her Age of twenty-one Years, or Marriage, and deviſed the excepted Lands in Truſt to be ſold for Payment of Debts: Provided, that if his Daughter ſhould marry in the Life-time of her Mother, without her Conſent firſt had in Writing, then 500l. Part of the ſaid Sum charged ſhould ceaſe, and ſhould be applied towards Payment of his Debts charged on the ſaid excepted Lands, and appoints his Wife Guardian of his Daughter, and makes her Executrix, and dies. The Daughter attains her Age of twenty-one, and without the Conſent of her Mother intermarries with the Plaintiff. Per Lord Keeper, This is a Portion to be raiſed out of Lands, and therefore to be conſidered as

Land; and though it be to go towards Payment of Debts on Breach of the Condition, and there appear one Hundred and twenty Creditors concerned, yet none that are in Danger of loſing their Debts; and it is then to be conſidered, as it ſtands upon the Condition it ſelf, and therefore the Plaintiff muſt have her whole Portion, for the Teſtator has appointed two Periods of Time to intitle her, (viz.) Marriage, or the Age of twenty-one; and as ſhe has attained that Age, it becomes a veſted and ſettled Intereſt in her, not to be deveſted by the Marriage without the Conſent of the Mother, for that Conſent cannot in any Reaſon be carried farther than during her Minority. Eq. Abr. 112, 113. King and Withers.

Equity, upon a Refuſal to conſent, will diſpence with ſuch Conſent.

Where there is a Condition, that a Feme ſhall marry with the Conſent of two Executors, and one without Reaſon is againſt the Match, the Court will diſpenſe with his Conſent. 2 Williams (628.) In what Caſes a Condition is to be performed Cy pres. Ibid.

# Covenants.

Covenant contrary to Intent.

WHERE it evidently appears, that a Covenant is contrary to the Intent of the Party, and by other Covenants it is contradicted, the Covenantor ſhall be relieved againſt it in Equity. Finch's Rep. 90.

A Covenant to ſtand ſeiſed, good in Equity, tho' not in Law.

A Power to leaſe Lands raiſed by a Covenant to ſtand ſeiſed, where an Eſtate was ſettled on the Covenantor for Life, Remainder to his eldeſt Son, with Power to himſelf to leaſe Part of the Lands, &c. not good at Law, was decreed good in Equity; it appearing, that the Conveyance was intended to be by Livery, which the Father was adviſed would be as well by Covenant, and on other Circumſtances. Wilmer's Caſe, 1 Chan. Caſ. 161.

Covenants concerning Purchaſes.

On a Covenant or Agreement for the Purchaſe of Lands, the Vendor ſtands as a Truſtee for the Purchaſor till the Conveyance is executed. 3 Chan. Rep. 5. And where a bad Title was ſold with Covenant for farther Aſſurance, and afterwards the Vendor purchaſed a good Title, and was decreed to confirm, &c. See 2 Chan. Caſ. 212.

Covenant by Tenant in Tail not to ſuffer a Recovery is good to bind the Aſſets, and, being accepted, ought not to be varied.

One in Conſideration of Marriage ſettles Land upon himſelf for Life, Remainder to his intended Wife for Life, Remainder to the Heirs of his Body on his Wife to be begotten, Remainder to his own right Heirs; and in the Deed of Settlement there is a Covenant with the Truſtees from the intended Huſband for himſelf and his Heirs, that he will not diſcontinue, dock, or ſuffer a Recovery, to bar the Limitations in the Settlement, but that the Iſſue of the Marriage ſhall enjoy and hold the Premiſſes, purſuant to the ſaid Limitations. The Marriage takes Effect, and they have Iſſue a Daughter, who marries the Plaintiff, and to whom her Father, who made the Settlement and Covenant, gave a conſiderable Portion. The Father afterwards ſuffers a Recovery to the Uſe of himſelf and his Heirs, and then deviſes the Lands in Truſt for his ſaid Daughter for Life, ~~Remainder to her firſt, &c. Son in Tail Male; and if~~ the Daughter ſurvived the Husband, to the Daughter in Fee; but if the Daughter ſhould die firſt, then the Remainder over, and dies: Husband and Wife bring a Bill for a ſpecifick Performance of the Covenant; and it was held, That A. being Tenant in Tail, and as ſuch having a Power to ſuffer a Recovery, the Lands deviſed ſhall not be affected, though the Covenant was good to bind the Aſſets; and ſuch Covenant being at firſt defective, Equity ought not to vary or alter it. 1 Williams 104, 468.

Where Equity will compel an Execution of the Covenant.

Where there is a Covenant in Conſideration of Marriage to ſettle Lands of 350 l. per Ann. on the Husband and Wife, and the Iſſue Male of the Marriage, Remainder to the Brothers of the Husband, Equity will compel an Execution of this Covenant, and not put the Party to an Action of Covenant in the Name of the Truſtee. 2 Williams (594.)

The Benefit of a Covenant loſt.

A Covenant, that if the Eſtate was to be ſold the Mortgagee ſhould have the Benefit of Pre-emption, but not being claimed before the Eſtate was ſold, the Benefit of the Covenant was loſt. Mod. Ca. in Law and Eq. 2.

A ſpecifick Execution of a Covenant decreed.

A Man covenanted for himſelf and his Heirs to ſurrender a Copyhold Eſtate to ſuch Uſes, and died before it was done; but on a Bill by the Heir for a ſpecifick Execution of the Covenant, it was decreed accordingly. Ibid. 106.

Covenant not to alien without Licence; no Relief.

Leſſee for Years covenants not to alien without Licence of the Leſſor, under Penalty of forfeiting the Leaſe, if he after aliens without Licence, Equity will not relieve him. Ibid. 112. Of Covenants to ſtand ſeiſed to Uſes. Ibid. 162, &c.

# Deeds and Conveyances.

Equity rais'd out of a Deed not proved.

A Decree obtained, whereby Equity was raiſed out of a Deed, when no Proof was made of the Deed pretended; which was conceived to be very hard. 1 Chan. Caſe 48.

Conſtruction and Proof of Deeds in general.

It hath been held, That the Conſtruction of Deeds is the Office of the Court, and that the Contents are not to be proved by the Witneſſes, but only the Fact touching the Execution. 3 Ch. Rep. 94.

Miſtakes, Miſrecitals, &c. will not avoid a Deed in Equity.

The reciting Part of a Deed is not a neceſſary Part, either in Law or Equity: It may be made uſe of to explain a Doubt of the Meaning of the Parties; but it hath no Effect or Operation. And let a Deed be never ſo ill drawn, and the Miſtakes and Miſ-recitals ever ſo many; yet if the Deed were really executed by the Party, all this will not be a ſufficient Ground in Equity to ſet aſide this Deed. 3 Chan. Caſ. 101, 118.

Deeds or Settlements ſolemnly executed are not to be ſet aſide by the Party's parol Expreſſions declaring againſt it. 1 Williams 482.

Deeds defective, when ſupply'd and made good.

Defective Deeds, Conveyances, Securities, &c. have been made good in Equity in divers Caſes. See 2 Vern. Rep. Mod. Ca. in Law and Eq. 63, 86, 152. Eq. Abr. 23, 170. A Defect in a voluntary Conveyance generally ſhall not be ſupply'd in Chancery; but if a Man voluntarily makes a Settlement as a Proviſion for his Children, and for their Maintenance, ſuch a voluntary Conveyance ſhall be made good here: Note the Difference, 1 Vern. 40.

Miſtake in a voluntary Conveyance refuſed to be amended.

A. having two Nephews, who were his Heirs at Law, by Conveyance executed in his Life-time ſettled all the Lands to the Uſe of himſelf for Life, Remainder to his Iſſue, if he ſhould happen to have any, Remainder to his Nephews; but in the Enumeration of the Particulars of the Lands a Miſtake was made, but, the Conveyance being merely voluntary, the Court refuſed to amend it, but left the Land to deſcend equally between them. 1 Vern. 37, 38.

Copy of a voluntary Settlement decreed to be delivered up, being indirectly gained.

A. makes a voluntary Settlement on her Nephew, keeping the Deed in her Power, in which Settlement there is no Power of Revocation; afterwards the Nephew's Father, ſecretly and by Fraud, on Behalf of the Nephew, gets an atteſted Copy of this Settlement; and then the Aunt, who made the Settlement, burns it, and ſettles the Premiſſes on another Nephew, delivering the ſaid Settlement into his Cuſtody. The firſt Nephew's Bill, to eſtabliſh the Copy of the firſt Settlement, is diſmiſſed with Coſts; upon which the ſecond Nephew, claiming under his Settlement, brings a Bill to have the atteſted Copy delivered up, and has a Decree for it, becauſe ſuch Copy had been indirectly gained. 1 Williams 577.

Defendant obliged to admit Articles as ſet forth in the Plaintiff's Bill.

A Perſon confeſſed, that he in a Paſſion had burnt his Marriage Articles, but it being made appear, that he produced them at the Execution of a Commiſſion ſubſequent in Time to the Day on which he pretended to have burnt them, he was committed to the Fleet until he ſhould produce them; and altho' he afterwards made Oath he had them not, and could not produce them, and that it was inſiſted for him, that altho' the Burning of the Articles was a great Misdemeanor, yet a Man was not to ſuffer perpetual Impriſonment, becauſe he could not do what was impoſſible for him to do; yet he could not be diſcharged, until he had conſented to admit the Articles were to the Effect of the Bill. 2 Vern. 561. Vide 1 Chan. Ca. 292, 293. S. P.

If A. on his Marriage with B. ſettles Lands on her for a Jointure, which were ſubject to an Intail, and C. the Brother of A. is privy to the Intail, and ingroſſes the Jointure Deed, and has the Deed of Intail in his Cuſtody, and owns that he cancelled it, being under an Apprehenſion that A. would dock the Intail; and A. deviſes the Inheritance to J.S. and dies without Iſſue; tho' C. recovers in Ejectment on the Deed of Intail, yet Equity will decree the Widow her Jointure; but J.S. being a voluntary Deviſee, can have no Relief. 2 Vern. 239. Decreed, and affirmed in the Houſe of Lords.

Where Deeds cancelled, and found among waſte Papers, held good.

Although a Deed appear'd to be cancelled, it was decreed to be a good Deed, and that the Cancelling ſhould not deveſt the Eſtate out of Truſtees, &c. And in the Lady Hudſon's Caſe, where the Father having taken Diſpleaſure at his Son, made an additional Deed of Jointure on his Wife, but kept it in his Power; and being afterwards reconciled to his Son cancelled the additional Jointure: Yet the Wife after his Deceaſe having found the cancelled Deed, recovered by Virtue of it. So where two Settlements were made of an Eſtate, and the former was never publiſhed, but found amongſt waſte papers, the Parties claiming by the ſecond Deed could not be relieved againſt the firſt Settlement. Clavering's Caſe, 2 Vern. 473, 476. 2 Ch. Rep. 100.

Where a Deed is ſuppreſſed, how the Court decrees.

Where an Heir ſuppreſſed a Deed or Will, formerly the Court decreed the Party claiming under ſuch Deed, &c. to hold and enjoy againſt ſuch Suppreſſor; but now the Court goes farther, and decrees the Suppreſſor to convey. 1 Williams 731.

The Contents of a Deed or Will ſuppreſſed, if uncertain, ſhall be taken moſt ſtrongly againſt the Suppreſſor. Ibid.

If a Deed be ſuppreſs'd, Relief ſhall be had on it.

The Plaintiff brought a Bill in Equity, to be relieved againſt the Defendant who had ſuppreſs'd a Marriage-Settlement (a), by which a Remainder in Tail Male was limited to the Plaintiff's Father, and all the prior Eſtates were ſpent: And upon Proof that the Settlement came to the Defendant's Hands, a Decree was had, that the Plaintiff ſhould hold and enjoy the Eſtate. 2 Vern. Rep. 380. See how far the Court have gone in caſe of Suppreſſion of Deeds, 2 Williams 680.

Deeds, &c. loſt.

Where a Demiſe is made of Lands, rendring Rent, if the Leaſe be loſt or miſlaid, the Landlord may ſue for the Rent, and declare on a Demiſe in general, without ſaying it was a Leaſe in Writing; and ſo you may in all Caſes where it is not a Thing that lies in Grant. 2 Vern. 98. Relief given in Equity where a Deed is loſt, &c. 1 Chan. Caſ. 78. Max. Eq. 29.

Proof of a Deed when loſt.

A Deed, when loſt by an inevitable Accident, may be proved by a Copy. But not by parol Evidence, tho' there ſhould be no Copy: Yet held, that parol Evidence ſhould be allowed to ſhew the Contents of a Deed that was not loſt, but proved to be in the Poſſeſſion of the other Party. Lucas 8.

Cuſtody of a Deed how to be, where two Perſons have Right.

Per Lord Chancellor: If Tenant for Life have a Deed, whereby the Reverſion and Inheritance is in another, he may at Law detain the Deed againſt the Reverſioner; and it was ordered in this Caſe, that a Settlement ſhould be brought into Court for its ſafeſt Cuſtody, and both Parties to have the Uſe of it as they had Occaſion, and to have Copies atteſted. 2 Chan. Caſ. 42.

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(a) In a like Caſe, the *Lord Chancellor* ſaid, where Deeds are ſuppreſs'd, *omnia præſumuntur*, and he who has committed Iniquity ſhall not have Equity; and he refus'd to allow a Trial at Law. 1 *Chan. Caſ.* 293.

Where the Defendant is not obliged to produce his Deed.

A Bill was exhibited for a Diſcovery, whether in a Mortgage made by A. to B. which had been aſſigned to the Defendant, there was not ſome Truſt declared for the Benefit of the Plaintiff. The Defendant denied there was any Truſt declared for the Plaintiff. The Anſwer being replied to, the Queſtion was, whether the Defendant ſhould be obliged to produce the Deed; and Lord Keeper ſaid, he would not oblige him, for by this Method all Purchaſors might be blown up. But the Reporter adds a Quære. 2 Vern. 463. For this, vide, How far Purchaſors without Notice are favoured, Eq. Abr. Tit. Purchaſe.

Counterpart of a Settlement ordered to be brought into Court.

A. made a Settlement upon his Son's Marriage, and for Default of Iſſue of ſuch Marriage, Remainder over to B. and the Son dying without Iſſue, A. got the Settlement and cut it in Pieces, but the Counterpart was intire, and in the Hands of A. and the Bill was brought to diſcover it, and have it preſerved; and the Counterpart being confeſs'd in the Anſwer, it was ordered to be brought into Court; and upon Motion to diſcharge the Order the Court would not do it, but made the Deed to remain in Court, to hinder A. from ſelling the Eſtate from the Plaintiff. Eq. Abr. 168.

A Deed not ſuffered to be inſpected till the Hearing of the Cauſe.

Though a Deed is proved in the Cauſe, and referred to in the Depoſitions, yet the Court will not order that the other Side ſhall have Leave to inſpect it before the Hearing, as this would enable him to pick Holes in it. 2 Williams 410.

## Deeds fraudulent.

Deeds may be deemed fraudulent by being conceal'd.

A Deed not fraudulent at firſt may afterwards become ſo by being conceal'd, or not purſued; by Means of which Creditors may be drawn in to lend their Money. 2 Vern. Rep. 262.

Voluntary Conveyances are fraudulent againſt Purchaſers.

All voluntary Conveyances are prima facie to be look'd upon as fraudulent againſt Purchaſors, unleſs the contrary be made appear: And in theſe Caſes a Trial may be directed on this Iſſue, whether the Deed by which the Defendant claims be fraudulent, or not; and the Defendant to admit the Plaintiff a Purchaſor, that the Fraud may come in Iſſue. 1 Chan. Caſ. 100, 216. See Eq. Ca. Abr. 23.

A. made

So Deeds of Conveyance to Uſes againſt Creditors.

A. made a Conveyance of Lands to B. to the Uſe of himſelf for Life, with Power to mortgage ſuch Part of the Eſtate as he ſhould think fit; Remainder to Truſtees to ſell to pay all his Debts: And afterwards he becomes indebted by Judgments, Bonds, and ſimple Contract. The Queſtion was, Whether the Creditors by Judgment ſhould be prefer'd in Point of Payment to thoſe by Bond and ſimple Contract, or muſt ſubmit to come in under the Deed of Truſt, and to be paid in an Average with the other Creditors? And the Deed of Truſt was decreed fraudulent as to the Creditors by Judgment, who had no Notice of it. 2 Vern. Rep. 510.

Dower is not forfeited by Fine and fraudulent Agreement.

The Wife join'd in a Mortgage with her Husband, and levied a Fine of the Lands to bar her Dower; and in Conſideration thereof, the Husband agreed the Wife ſhould have the Equity of Redemption of the Mortgage: Afterwards he made a ſecond Mortgage; and the Court took this Agreement to be fraudulent as againſt the ſecond Mortgagee, ſo far as to intitle the Wife to the whole Equity of Redemption; but decreed ſhe ſhould have her Dower, notwithſtanding the Fine. Dolin verſus Coltman, 1 Vern. 294, 295.

A Deed made privily to ſettle Eſtate before Marriage.

A Woman made a Deed of her former Husband's Eſtate privily, without the Knowledge of the ſecond Husband, and it was ſet aſide as fraudulent, and the ſecond Husband decreed to enjoy the Lands, it appearing that he was induced to marry the Woman in Expectation of having the Eſtate, and without which he would not have married her. 2 Ch. Rep. 84.

Not fraudulent, if to provide for Children by a former Husband.

But where a Widow, before her Marriage with her ſecond Husband, aſſigned over great Part of her Eſtate to Truſtees, in Truſt for her Children by her former Husband; tho' this was done without the Aſſent or Knowledge of the ſecond Husband, yet it being to provide for her Children by the firſt Husband, it was held good: For the Court thought that the Widow might with a good Conſcience do it, before ſhe put her ſelf under the Power of a ſecond Husband. 1 Vern. Rep. 408. See Eq. Abr. 59.

Where an old Woman of weak Underſtanding was deceived in a Conveyance, Relief had againſt it.

An Attorney procured a Conveyance from a Woman of ninety Years of Age, of an Eſtate for 400 l. which was worth a great Deal more; and the old Woman being very Weak in Body and Mind, and having no Counſel or Friend to aſſiſt her, and on ſeveral ſuſpicious Circumſtances, the Court would neither decree the Deed of Conveyance to be carried into Execution againſt the Heir at Law, but diſmiſs'd the Plaintiff's

Bill; nor would decree the Writing to be delivered upon a Croſs-Bill of the Defendant. Green and Wood, 2 Vern. 632, 633.

And where a Man impos'd upon, Articles, Deeds, Fine, &c. ſet aſide.

If a legal Conveyance be obtained by Fraud, it is the ſame in Equity, as if no Conveyance had ever been made. And Articles of Agreement for the Purchaſe of Lands, and a Conveyance executed in Purſuance thereof, alſo a Fine levied, &c. were all ſet aſide for Fraud, where it appeared the Party was impos'd upon, and Art was uſed to prevail upon him to ſell the Lands. Note; In this Caſe it was prov'd, that the Plaintiff's Father who ſold the Eſtate was a ſenſible Man, and had not any apparent Weakneſs upon him; and that he was abſolute Owner of the Land, and might have given it away: Yet the Lord Keeper decreed againſt this Purchaſe. 1 Vern. Rep. 206, 445.

A Conveyance by a weak Man for a ſmall Conſideration was ſet aſide. 2 Williams 203.

What is Evidence of a Fraud in reſpect to a Deed.

It is Evidence of a Fraud when there is no Proof that any Inſtructions were given for preparing the Deed by the Grantor, or when the Deed was not read to him. Ibid. 205.

Difference between a Deed and a Will gained from a weak Man.

There is a Diverſity between a Deed and a Will gained from a weak Man, and upon a Miſrepreſentation, in regard Equity will ſet aſide the Deed, but not the Will. Ibid. 270.

What is a good Reaſon to ſet aſide a Grant, &c.

Where there is either Suppreſſio veri, or Suggeſtio falſi, it is a good Reaſon to ſet aſide any Grant or Releaſe. 1 Williams 240.

Unreaſonable Marriage Settlement not to be ſet aſide.

An unreaſonable Marriage Settlement ought not to be ſet aſide, where no Fraud is proved, or any Incapacity of the Husband. Mod. Ca. Law and Eq. 80.

Aſſignment of a Leaſe ſet aſide on a Miſinformation.

An Aſſignment was made of an Intereſt in a Leaſe of Lands of the Value of 200 l. per Ann. in Conſideration of 20 l. paid, and upon Miſinforming the Plaintiff, was ſet aſide as obtained by Fraud. Ibid. 83.

Where a Mortgage ſhall be ſet aſide.

Where a Mortgagee helps to carry on a Fraud, his Mortgage ſhall be ſet aſide. Ibid. 96.

Grant of a Rent-charge relieved againſt.

A. (who was young and neceſſitous) granted to B. and his Heirs for 300 l. a Rent-Charge of 300 l. per Ann. to commence after his Death without Iſſue Male, provided if A. had any Iſſue Male who ſhould attain the Age of twenty-one Years, the Grant ſhould be void. A. died without Iſſue, and on the Circumſtances of the Caſe the Court relieved againſt the Rent-Charge. 1 Vern. 237.

A Bargain, tho' unfair, yet if not attended with ſtrong Badges of Fraud, not to be relieved againſt.

A. had an Inn in Newcaſtle deſcended to him, which was let at 64 l. per Ann. but ſubject to a ſmall Mortgage,

gage, and A. being very poor was inveigled to ſell it for 87 l. and afterwards brought a Bill to be relieved, but was diſmiſſed. Lord Chancellor declaring, That though the Bargain was not a fair One, yet, as it was not attended with ſtrong Badges of Fraud, there could be no Relief againſt it. Eq: Abr. 170.

In what Caſes a fraudulent Will may be relieved againſt in Equity.

Fraud in obtaining of a Will, relating only to a Perſonal Eſtate, is not examinable in Chancery, after the Will is proved in the Spiritual Court, ſo long as that Probate is in Force. But there may be a Fraud in obtaining a Will, that may be relievable in Equity concerning Lands, of which no Advantage can be taken at Law; as if a Man agrees to give the Teſtator 2000 l. in Bank-Bills, if he will deviſe his Eſtate to him, and on the Delivery of ſuch Bills he makes his Will, and deviſes his Eſtate accordingly, and the Bills prove to be forged or counterfeit. 2 Vern. 9, 77, 700. 1 Williams 288.

Will of a real Eſtate not to be ſet aſide in Equity, before a Trial at Law.

But it has been decreed in the Houſe of Lords, that a Will of a real Eſtate could not be ſet aſide in Equity for Fraud or Impoſition, but muſt firſt be tried at Law on Deviſavit vel non, being Matter proper for a Jury to inquire into. Eq. Abr. 406. Mod. Ca. in Law and Equity 100.

Will gained upon a Miſrepreſentation, not ſet aſide.

A Will gained from a weak Man upon Miſrepreſentation ſhall not be ſet aſide. Secus of a Deed. 2 Williams 270.

Fraudulent Releaſe, Statute, Bill of Exchange, &c.

A fraudulent Releaſe ſhall be made void in Equity: So a Statute or Security for a large Sum, where a ſmall Sum only is received, on Payment of the Principal and Intereſt due. Relief hath been decreed againſt a Bill of Exchange gained by Frand (a); and that the Money ſhould be repaid, with Intereſt and Coſts, aſcertained by the Plaintiff's own Oath. And an honeſt Debt due on a Note may be loſt by Reaſon of Fraud uſed to come at it. * 2 Vern. Rep. 123, 346.

Releaſe gained from an Heir, under a Miſrepreſentation, ſet aſide.

A Deviſee under a Will defectively executed repreſents the Will duly executed, and for a ſmall Sum gains a Releaſe from the Heir; the Releaſe was ſet aſide. 1 Williams.

So if gained from a Husband of a Coheir.

So where a Man deviſed a Rectory by his Will, but that being void it came to his three Daughters as Coheirs. There being a Suit in Chancery, the Husband of one of the Daughters fearing to be in Law, and being made to believe that he ſhould be forced to

(a) On Pretence of a Demand that was fictitious.

* As by adding a Seal to the Note, which was good without it.

pay the Coſts, releaſed the Arrears that ſhould be coming to him for his Share of the Rectory to the other Siſters, who were to bear the Charges of the Suit, and his Share of the Arrears amounting to 1000 l. the Releaſe was ſet aſide, it being a Miſapprehenſion in him. 1 Vern. 32. Vide 1 Vern. 20. 1 Williams 240. where it is declared by my Lord Chancellor to be the conſtant Rule in Equity, to avoid a Releaſe where there is Suppreſſio veri, or Suggeſtio falſi.

The Rule in Equity to avoid a Releaſe.

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# Eſtates in Fee-ſimple, Fee-tail and for Life.

## *See* Bonds.

Diverſity in a Deviſe to pay Money, when it is a Fee, and when not.

If Lands be given to a Man, paying out of the Profits, or out of the Land in general, a certain Sum, it is no Fee-ſimple: But a Deviſe, paying a certain Sum at the End of two Years, or at any other Time, and the Profits not being ſufficient, will paſs a Fee-ſimple; and ſo a Deviſe of Lands, paying a certain Sum generally, without ſaying out of the Land, is a Fee-ſimple. 2 Vern. 106. 3 Cro. 378. See Cro. Car. 158. 1 Jon. 211. 1 Bul. 194. Cro. Car. 416. Cr. Ja. 527. 2 Mod. 25.

What ſhall be an Eſtate in Fee, and not an Eſtate-tail.

A Surrender of a Copyhold to the Uſe of Baron and Feme for their Lives, & Hæredum & Aſſignatorum of the ſaid Baron and Feme, and for Default of ſuch Iſſue, to the right Heirs of A. this is an Eſtate in Fee, and not an Eſtate-Tail in the Baron and Feme; otherwiſe had it been in the Caſe of a Will. 1 Williams 70.

Where a Baſtard ſhall have a Fee.

If Lands are given to a Baſtard and his Heirs, though ſuch Baſtard can have no Heir but of his Body, yet it is a Fee-ſimple. Ibid. 78.

*A.* deviſes all her Land and Eſtate, a Fee paſſes.

A. Deviſes all her Land and Eſtate in B. to J. S. it was held a Fee paſs'd, theſe Words carrying not only the Lands, but alſo Teſtatrix's Intereſt. 2 Williams 523. Eq. Abr. 278.

Deviſe of Reſt and Reſidue of real and perſonal Eſtate, a Fee paſſes.

If a Man deviſes 50 l. to be paid in three Months, and all the Reſt and Reſidue of his real and perſonal Eſtate whatſoever he gives to his Wife, and makes her Executrix, the Wife has a Fee-ſimple. 2 Vern. 564.

The Word *Eſtate* ſignifies the Intereſt in the Land, and by a Deviſe of the Reſt of an Eſtate a Fee paſſes.

So where the Teſtator, being ſeiſed of Copyhold and Freehold, deviſed all the Reſt of his Eſtate, whether Freehold or Copyhold, to his Wife and Children, equally to be divided amongſt them; and it was held, the Word Eſtate muſt ſignify the Intereſt he had in the Land, and ſo paſs a Fee. 4 Mod. 89. Stil. 281. 2 Lev. 91. 1 Mod. 100. 2 Chan. Ca. 262.

Where an Eſtate-tail, and not a Fee, paſſes.

A. deviſes to his ſecond Son and his Heirs for ever, and for want of ſuch Heirs, then to the right Heirs of the Teſtator: This is an Eſtate-Tail. But had the Deviſe over been to a Stranger, the ſecond Son would have taken a Fee. 1 Williams 23. Salk. 233.

A Deviſe to A. for Life, Remainder to his firſt, &c. Son in Tail Male, and ſo on to his ſixth Son; and if A. ſhould die without Iſſue Male of his Body, then to B. This was held to be an Eſtate-Tail in A. to the End, that the ſeventh and other Sons ſhould not be excluded. 1 Williams 59, 754.

So had the Deviſe been to A. for Life, and if A. died without Iſſue, then to B. here the ſubſequent Words would have turned the expreſs Eſtate for Life into an Eſtate-Tail. 1 Williams 605.

One deviſes his Lands for Payment of his Debts, and then to A. for Life, with Power to make Leaſes, &c. Remainder to the Heirs Male of the Body of A. Though this be but the Deviſe of a Truſt and Executory, and expreſſed to be to A. for Life, yet it is an Eſtate-Tail in A. barrable by Fine and Recovery. Secus in Caſe of Marriage Articles to ſettle an Eſtate on A. for Life, Remainder to the Heirs Male of his Body; this being an Agreement to do a future Act, and in which the Iſſue are particularly conſidered, and looked upon as Purchaſors. 1 Williams 142, 290.

Tho' B. is Tenant in Tail of Land to be purchaſed, yet the Purchaſe to be made being executory, and in the Power of the Court, he ſhall be only Tenant for Life, Remainder to his firſt, &c. Son.

A. deviſed 10000 l. to Truſtees, in Truſt to be laid out in Lands, and ſettled on B. for Life, without Waſte, Remainder to Truſtees and their Heirs, for the Life of B. to ſupport contingent Remainders, with a Power to B. to make a Jointure, Remainder to the Heirs of the Body of B. Remainders over, and by the ſame Will deviſes Lands to B. to the ſame Uſes, and dies, leaving C. Executor. B. ſues C. for the Deeds relating to the

Lands in his Hands, and to have the Money laid out in Lands and ſettled; and it was held by Lord Chancellor King, that B. had an Eſtate-Tail in the Lands deviſed, and conſequently was intitled to the Deeds relating thereto, though as to the Land to be purchaſed, that being executory, and in the Power of the Court, B. was to be but Tenant for Life, with Remainder to his firſt and other Sons. 2 Williams 471. Eq. Abr. 185, 186.

What Limitations create an Eſtate-tail.

If Lands are deviſed to one, and if die before Iſſue, or if he depart not leaving Iſſue, or if he die not having a Son, all theſe Limitations create an Eſtate-Tail. 2 Vern. 766.

One deviſes to A. and B. equally for their Lives, without committing Waſte, and if either die leaving Iſſue or Iſſues, then in Truſt for ſuch Iſſue or Iſſues of the Mother's (A.'s or B.'s) Share, or elſe in Truſt for the Survivor or Survivors of them and their reſpective Iſſues; and if the ſaid A. and B. die without Iſſue, and their Iſſue die without Iſſue as aforeſaid, then the Premiſſes to remain over, &c. with particular Powers to A. and B. This was held in the Court of Grand Seſſions to be an Eſtate-Tail in A. and B. with Croſs Remainders in Tail; but the Judgment was reverſed in K. B. but the Judgment of Reverſal was reverſed in the Houſe of Lords, and the Judgment below eſtabliſhed. Fitz-Gib. 7. Mod. Ca. in Law and Eq. 253, 382. Eq. Abr. 185.

Power in Equity of Tenants in Tail, to ſell, deviſe, &c.

An Eſtate is limited to a Man for Life, and the Remainder to the Heirs of his Body; the Law veſts the whole Eſtate-Tail in him, and he may diſpoſe of it. 3 Chan. Ca. 120. A Tenant in Tail, it is ſaid, may deviſe an Equity of Redemption of Lands for the Payment of Debts. 1 Vern. Rep. 41. And a Recognizance conditioned, that Tenant in Tail ſhould not ſuffer a Recovery, was decreed to be delivered up, as creating a Perpetuity. 2 Vern. Rep. 251. Moor 809.

Acts not binding to Iſſue in Tail.

If Tenant in Tail ſell Lands, and die in Priſon, not executing Deeds, the Iſſue are not bound.

In Caſe there be an Intail in Equity, no Agreement of the Father can bind the Iſſue without Fine or Recovery, or other legal Bar: And where a Tenant in Tail of Land had ſold it at a full Value, and received the Conſideration Money, and covenanted to levy a Fine, which he was decreed to do; yet dying, (tho' in Priſon in Contempt for not performing the Decree) the Iſſue in Tail could not be bound by it. 2 Vern. 306. 1 Chan. Ca. 236. But ſee ibid. 294.

Eſtate-Tail in Truſt barred.

If Truſtees join with the Ceſtuy que Truſt in Tail in a Feoffment to Uſes, &c. this will bar the equitable Eſtate-Tail in the Truſt. 2 Vern. Rep. 345, 346.

What Words ſhall paſs only an Eſtate for Life.

A. deviſes a Third of all his Eſtate whatſoever to his Wife, and two Thirds of all his real and perſonal Eſtate to his Son J. S. and his Heirs; and it was held, that the Wife had but an Eſtate for Life in the third Part of the real Eſtate; the Word Eſtate being intended to deſcribe the Thing only, and not the Intereſt in the Thing; for when the Teſtator intends to paſs a Fee, he adds the Word Heirs to the Word Eſtate. 2 Williams 335.

A. deviſed to his Wife for Life, and after her Death to B. his ſecond Son, and to his Heirs Male of his Body, (viz.) to the firſt Son of the ſaid B. and to the Heirs Male of the Body of ſuch firſt Son, and ſo to the other Sons of B. ſucceſſively in the ſame Manner, with Remainders over. Per Raymond C. J. The Viz. explains what Teſtator means by Heirs of the Body, viz. I mean, by Heirs of his Body, his Sons, and therefore clearly the Deviſee takes but an Eſtate for Life. Fitz-Gib. 112.

A Man ſeiſed in Fee deviſed to J. B. for his Life only, without Impeachment of Waſte, then to the Iſſue Male of his Body lawfully to be begotten, and to the Heirs Male of the Bodies of ſuch Iſſue lawfully begotten; and for Default of Iſſue, Remainder to J. B. and the Heirs Male of his Body; and for Want of ſuch Iſſue, Remainder over: Adjudged, that J. B. took only an Eſtate for Life; for the Eſtate was given to him for Life, and there was a Limitation afterwards to his Iſſue, which was a Deſcription of the Perſon who was to take the Eſtate-Tail. Eq. Abr. 184. Lucas 181. S. C.

### Expoſition of Words. *See* Wills.

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# Feoffments.

A Feoffment may operate as a Covenant to ſtand ſeiſed.

In the Caſe of Thompſon and Attfield it was allowed, that although a Conveyance be made purporting a Deed of Feoffment; yet nevertheleſs it may operate as a Covenant to ſtand ſeiſed to Uſes, &c. And here a Difference was taken between the ſeveral Sorts of Conveyances, as to the Supplying their Defects; in what Caſes they may and may not be made good, as particularly appears under Title Deeds. 1 Vern. Rep. 40.

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# Fines.

## *See* Recoveries.

Fine levied by Decree in Chancery, how it works.

By Decree in Chancery a Fine was levied to a particular End and Purpoſe, which would operate further in Point of Law than the Decree order'd it; And it was reſolved, that ſuch Fine ſhould not be ſuffer'd in Equity to work any farther than the Decree intended. 1 Chan. Caſ. 49.

A Fine, &c. will bar a Truſt as an Eſtate at Law; Q. As to a Remainder.

A Fine of a Ceſtuy que Truſt will bar an Eſtate; but not a Remainder over to another: And it has been doubted, whether by a Recovery of Ceſtuy que Truſt any Thing be barred. 1 Chan. Caſ. 213. But it has been held, That the Fine or Recovery of a Ceſtuy que Truſt ſhall bar and transfer the Truſt, as it ſhould an Eſtate at Law; if it be upon a valuable Conſideration. Ibid. 49. And Ceſtuy que Truſt in Tail, where the Remainder

mainder in Tail was deviſed over, levied a Fine, and died without Iſſue: On a Queſtion, whether this Fine by Ceſtui que Truſt in Tail, and Non-claim, ſhould bar the Remainder Man, the Lord Keeper was of Opinion that it ſhould. 1 Vern. Rep. 226. See Mod. Ca. in Law and Eq. 144. *

But not bar a Truſt or Equity created by the Fine.

It hath been reſolved, that a Fine with Proclamations and Non-claim bars all Truſts and Equity; (a) but this is on two Differences: Firſt, Where the Equity chargeth the Lands, there the Fine bars; but when it charges the Perſon in Reſpect of the Land, it doth not bar; And if the Equity or Truſt be created by the Fine, that Fine ſhall never bar the Equity which it created. An Entry on the Land by Ceſtuy que Truſt is no ſufficient Claim to avoid the Fine; for the Claim of an Equity can be made no other Way but by Subpœna. 1 Chan. Caſ. 268, 278.

Fine cannot be levied of Money agreed to be laid out in Land.

A Fine cannot be levied of Money agreed to be laid out in Land, and ſettled in Tail, but a Decree can bind ſuch Money equally as a Fine could the Land. 1 Williams 130.

If levied by one having a defeaſible Right, it is good.

Though a Fine levied by Leſſee for Years, or at Will, be void, yet it is otherwiſe where levied by one having a defeazable Right. 1 Williams 520.

Where, in a Mortgage by Husband and Wife, the Wife ought to levy a Fine.

A. ſeiſed in Right of his Wife of a Share in the New River Water in Fee, they both make a Mortgage by way of Leaſe for one thouſand Years by Deed without Fine, reſerving a Pepper-Corn Rent. The Baron died, upon which the Feme received the Profits and paid the Intereſt. The Mortgagee brought his Bill to foreclose the Wife; and it was held, that there ought to have been a Fine, it being the Wife's Inheritance, and therefore ſhe was not barred. 2 Williams 127.

Where Legacies charged upon Land not barred by a Fine of the Land.

If J. S. deviſes Land to B. in Tail, Remainder to C. in Tail, ſubject to the Payment of Legacies, and C. levies a Fine and five Years and Non-claim paſs, and C. grants a Rent-Charge to A. and Mortgages to B. yet the Legacies are not barred by the Fine and Non-claim, for C. having no Title but under the Will, the Purchaſors muſt be preſumed to take Notice of the Legacies and the Contents thereof. 2 Vern. 662.

Tenant for Life levies a Fine, and mortgages; Mortgagor relieved againſt the Forfeiture.

A. deviſed to B. the Father for Life, Remainder to his Son C. an Infant, and deviſed 400 l. to the Son, to

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* But if there be an Entry and Claim, *quære* whether the Remainder is barred. *Vide* 2 *Chan. Ca.* 64. 1 *Williams* 91.

(a) Or elſe no Man would know when he was ſure of an Inheritance.

to be paid at twenty-one, and made the Father Executor, and left 2000 l. perſonal Aſſets; and B. having ſpent the perſonal Aſſets mortgaged the Lands to J. S. and made Affidavit that they were free from Incumbrances, and that he was ſeiſed in Fee, and levied a Fine for corroborating the Mortgage; and alſo declared the Uſe thereof to him and his Heirs. The Son having entered for a Forfeiture, the Mortgagee brought his Bill to be relieved, and the Court decreed, That the Mortgagee, notwithſtanding the Forfeiture, ſhould hold and enjoy the Lands againſt the Son during the Life of the Father. Eq. Abr. 257.

A Truſt Eſtate not forfeited by a Fine. 2 Williams 146.

The Sale of Lands by a Truſtee, and Fine and Non-claim, no Bar.

A Truſtee ſold the Land to a Stranger, who had no Notice of the Truſt, and a Fine and five Years paſt; and afterwards the Truſtee, for a valuable Conſideration really paid, purchaſed theſe Lands again: And it was decreed, That the Truſtee, notwithſtanding the Fine and Non-claim for five Years, ſhould ſtand ſeiſed in Truſt as before the Sale. Bovey's Caſe, 1 Vern. 60. 2 Chan. Rep. 124.

If a Purchaſer of Land have Notice of a Truſt, his Fine will not bar.

A. ſeiſed in Fee in Truſt for B. for full Conſideration conveys to C. the Purchaſor having Notice of the Truſt (a); afterwards C. to ſtrengthen his own Eſtate, levies a Fine: Whether B. the Ceſtuy que Truſt, be not in that Caſe bound to enter within five Years. 1 Vern. Rep. 149.

(a) *B.* is not bound; becauſe here *C.* purchas'd with Notice, and although any Conſideration be paid by him, yet he is but a Truſtee for *B.* And ſo the Eſtate not being diſplaced, the Fine cannot bar. *Per* Serjeant *Maynard & al'.*

A Fine by a Mortgagee is no Bar to the Mortgagor.

Fine levied by a Mortgagee, and five Years Non-claim, will not bar the Mortgagor of his Equity of Redemption, who may notwithſtanding bring his Bill to redeem. 1 Vern. 252. See 2 Vern. 189.

Where Equity will not make good a Fine;

If Tenant in Tail covenants to levy a Fine, and dies before it is executed, though the Fine has proceeded to a Caption, yet Equity will not make it good, although for a valuable Conſideration. Eq. Abr. 358. 2 Vern. 5.

nor ſupply any Defect in the levying it.

A. has two Sons B. and C. A. on the Marriage of B. covenants, before the End of Eaſter Term then following, to levy a Fine to the Uſe of B. and the Heirs of his Body, Remainder to the Uſe of C. and the Heirs of his Body, Remainder to A. in Tail, Remainder to him in Fee. The Fine was levied as of Eaſter Term, but the

Marriage being put off till after Eaſter Term, the Deed was not dated till after, ſo that the Fine was levied before the Date of the Deed, and by Conſequence the Deed was no Declaration of the Uſes of that Fine. The Father died, and then B. died, leaving Iſſue W. and W. having borrowed ſome Money of J. S. mortgages the Land to him, and dies without Iſſue. C. claiming under the Settlement brings his Bill to have it eſtabliſhed, and that the Defect before-mentioned may be ſupplied; but in regard the Conſideration of B.'s Marriage did not extend to him, the Court refuſed him any Relief. Eq. Abr. 258.

Fine ſet aſide.

A Fine was ſet aſide becauſe levied to other Uſes than what were intended by Marriage Articles. Lucas 436, 437.

Where a Fine was levied and decreed to be only in Truſt.

A. having prevailed with a Woman to levy a Fine of ſome Houſes, and to execute a Deed leading the Uſes thereof, to him and his Heirs; and it being proved, that ſhe at the Time of levying the Fine declared, that ſhe muſt make uſe of ſome Friend's Name in Truſt; and afterwards by Will declaring, that ſhe only levied ſuch Fine in Truſt, the better to diſpoſe of her Eſtate, and having deviſed it to J. S. ſubject to the Payment of her Debts; the Court decreed not only the Eſtate liable to the Debts, but alſo a Conveyance to J. S. the Deviſee. 2 Vern. 307.

Infant not barred by the Laches of his Truſtees in not entring to avoid a Fine of his Lands.

Lands are deviſed to Truſtees till Debts paid, and then to an Infant and his Heirs, and J. S. a Stranger, enters on the Lands, and levies a Fine, and five Years and Non-claim paſs, and the Infant, when of Age, brings an Ejectment, but is barred, becauſe the Truſtees ought to have entered; yet Equity will relieve, and not ſuffer an Infant to be barred by the Laches of his Truſtees, nor to be barred of a Truſt-Eſtate during his Infancy; and the Infant in this Caſe ſhall recover the mean Profits. 2 Vern. 368.

The Manner of relieving againſt a Fine obtained by Fraud,

and for any Error, &c. in what Court it is cogniſable.

Tho' the Court of Chancery has a Power to relieve as much againſt a Fine obtained by Fraud or Practice, as any other Kind of Conveyance, yet ſuch Relief was not by decreeing a Vacat of the Fine, but by ordering a Re-conveyance; but that for any Error in the Fine, or Irregularity, or ill Practice in the Commiſſioners, it was a Matter cognizable in that Court where the Fine was levied, and for which that Court may vacate the Fine. So held between St. John and Turner, Eq. Abr. 259.

# Grants.

A Grant of the Hundred paſſes only the Franchiſe, and not the Land in the Hundred.

A. By Deed granted his Hundred and Manor of Odyham in Hampſhire, and his Manor of Woking in Surry, and all his Manors, Lands and Premiſſes in Odyham and Woking aforeſaid.

The Queſtion was, Whether the Grantor's Manor of Hartlerow, which was within the Hundred of Odyham, but not within the Manor of Odyham or Woking, ſhould paſs by this Deed. And per Lord Chancellor King, an Hundred is only a Franchiſe conſiſting of a Court, called the Hundred-Court, and probably has the Return of Writs, and by ſuch Grant the Franchiſe paſſes, but not all the Grantor's Lands; wherefore by the Word (Hundred) the Manor of Hartlerow, not being named in the Grant, does not paſs. 2 Williams 399, 400.

Where no Eſtate is mentioned the Grant is void.

A Man, poſſeſſed of Land for a Term of two thouſand Years, grants the Lands to D. without mentioning any Term, to the Uſe of another for Life, &c. The Grant and Limitation is void for Uncertainty, it not ſaying, what Eſtate or Term was granted to D. 2 Vern. Rep. 684.

Perſons for whoſe Benefit Land is held are to join in Grants.

On a Grant made to the Warden and Aſſiſtants of S. for the Benefit of the Inhabitants, for Eaſe of Taxes and Relief of the Poor, It was decreed, that they ſhould not let or make any Leaſes of the Lands without the Conſent of the major Part of the Inhabitants of the Place, it being for their Benefit in general. 1 Chan. Ca. 269, 270.

Grant of a Guardianſhip, Equity will not ſet it aſide.

The Plaintiff's Father was indebted to the Defendant, and by Deed granted him the Guardianſhip of his Children, with a Covenant not to revoke the Grant: And now the Plaintiff an Infant brought his Bill to remove him; but in regard there was a juſt Debt owing to the Defendant the Guardian, from the Father, the Court declared they would not reſtrain him from receiving the Rents and Profits of the Eſtate, but only from abuſing the Infant's Perſon. Lecone verſus Shieres, 1 Vern. Rep. 442.

According to Statute.

The Statute is, That the Father may by Deed grant the Guardianſhip of his Children from Time to Time. 12 Car. 2. cap. 24.

Jointures

# Jointures and Settlements.

*See* Deeds.

Where a Recovery ſuffered by a Jointreſs is a Forfeiture within the Statute 11 *H.* 7.

A. Upon his Marriage made a Settlement, whereby he was Tenant for Life, then to his Wife in ſpecial Tail of Lands of 400 l. per Annum Value, with Remainder to his own right Heirs. A. and his Wife joined in barring this Settlement, and a new Settlement was made (viz.) to J. S. and his Heirs in Truſt, as to Lands of 150 l. per Annum, for the Wife and the Heirs of her Body; and for want of ſuch Iſſue in Truſt for A. and his Heirs. A. died without Iſſue, and the Wife ſuffered a Recovery, and deviſed the Lands for the Payment of her Debts, and died without Iſſue. On a Bill brought by the Heir of A. againſt the Wife's Creditors the Queſtion was, Whether this was ſuch a Jointure made on the Wife ſo as to make the Recovery a Forfeiture within the Statute 11 H. 7. and held that it was, for the Statute ſays, Any Eſtate limited to the Wife, or to her Uſe; and this Statute was before the Statute H. 8. Of Uſes, at which Time a Uſe was the ſame Thing as a Truſt is now. Next the Statute ſays, Limited for Life or in Tail. Now a General Tail is as much an Intail as a Special one, and as much within the Words of the Statute, and the Statute intended to provide for the Remainder-Man as well as the Iſſue. Eq. Abr. 220.

Jointreſs Tenant in Tail after Poſſibility, &c. reſtrained from committing Waſte.

On a Motion to ſtay a Jointreſs, Tenant in Tail after Poſſibility, &c. from committing Waſte, the Court held, that ſhe being a Jointreſs within 11 H. 7. ought to be reſtrained, being Part of the Inheritance which by that Statute ſhe is reſtrained from aliening, and therefore granted an Injunction againſt wilful Waſte. Eq. Abr. 221.

Where a Jointreſs, by Combination with the Heir, refuſes to accept a Deviſe to her of other Lands in lieu of her Jointure.

A. charges Land in D. with a Portion for a Daughter by a firſt Venter, and then marries, and ſettles Part of thoſe Lands as a Jointure on a ſecond Wife, who has no Notice of the Charge; and A. believing the Portion would take Place of the Jointure, by Will gives other Lands to the Wife in lieu thereof; and the Wife, by Combination with the Heir, refuſes to accept of the Deviſe: The Daughter ſhall hold the other Lands which deſcended to the Heir till ſatisfied her Portion. 2 Vern. 219.

Execution of Marriage Articles decreed in Equity.

If J.S. before Marriage articles to ſettle a Jointure on his intended Wife, and the Marriage is conſummated, and the Husband dies before any Settlement made; an Execution of the Articles will be decreed in Equity. 2 Vern. 343. For Marriage Articles not performed are conſidered in Equity as if they were. Lucas 437.

Jointure evicted made good.

If J. S. gives a voluntary Bond after Marriage to make a Jointure on his Wife, and he makes a Jointure accordingly, and the Wife gives up the Bond, and the Jointure is evicted; the Jointure ſhall be made good out of the perſonal Eſtate, there being no Creditors; for the Delivery up of the Bond by a Feme Covert could no Way bind her. 1 Vern. 427.

Jointreſs may commit Waſte to make up the Defect of her Jointure.

If there be a Jointreſs, and a Covenant, that her Jointure ſhall be of ſuch a yearly Value, and it falls ſhort; though her Eſtate be not without Impeachment of Waſte, yet ſhe may commit Waſte, ſo far as to make up the Defect of the Jointure, and Equity will not prohibit. Eq. Abr. 222.

Deficiency of a Jointure made up, notwithſtanding any Neglect or Laches in the Jointreſs in not requeſting it.

J. S. made a Settlement on his eldeſt Son for Life, Remainder to his firſt, &c. Son in Tail, Remainder over; with Power for his Son to appoint any of the Lands, not exceeding 100 l. per Annum, to any Wife he ſhould afterwards marry, for a Jointure. The Father died, and the Son married, and appointed certain Lands after Marriage to Truſtees, in Truſt for his Wife for a Jointure, and covenants, that if they were not of 100 l. per Annum Value, that, upon Requeſt made to him any Time during his Life, he would make them up ſo much out of other Lands in his Power. He lived ſeveral Years, and no Complaint was made that the Lands were not of that Value, nor Requeſt to make it up, and died without Iſſue. On a Bill brought by the Widow, to have the Jointure made up 100 l. my Lord Keeper ſaid, that a Proviſion for a Wife or Children was not to be conſidered as a voluntary Covenant; and therefore decreed the Deficiency to be made up, notwithſtanding ſome particular Circumſtances in the Caſe, and her Neglect in not requeſting it during the Coverture; for the Laches of a Feme cannot be imputed to her. Eq. Abr. 222.

A prior Settlement ſet aſide as fraudulent againſt a Jointreſs, who is a Purchaſer for a valuable Conſideration.

If A. in the Life-time of his firſt Wife, ſettles Lands to the Uſe of himſelf for Life, Remainder to his firſt, &c. Son in Tail, and the ſame dies without Iſſue; and A. on his ſecond Marriage, in Conſideration of a Portion paid, agrees to ſettle Part of the Lands as a Jointure on his ſecond Wife: The Court will ſet aſide the firſt Settlement as fraudulent againſt the Jointreſs, who is a Purchaſer for a valuable Conſideration. 1 Chan. Ca. 100.

Where a Truſt reſults to a Jointreſs.

If a Feme Covert joins with her Huſband in a Fine and Mortgage of her Jointure-Lands; a Truſt reſults for her, when the Mortgage is paid, to have the Lands again. 2 Chan. Ca. 161.

Jointreſs paying a Mortgage to hold over the Lands.

A Jointreſs was of Land mortgaged; and decreed that the Jointreſs, paying the Mortgage, ſhould hold over, till ſhe and her Executors ſhould be repaid with Intereſt. 1 Chan. Ca. 271. 2 Vent. 343.

Where a Jointreſs and the Heir ſhall contribute to pay off Incumbrances.

But where a Jointreſs and the Iſſue of the Huſband claim'd by the ſame Deed of Settlement, and there was a prior Incumbrance on the Eſtate: It was held, they ſhould contribute in the Diſcharge of the Incumbrance, and that the Jointreſs ſhould not hold over her Jointure, and lay the whole Burden on the Heir. 2 Chan. Rep. 446.

Deeds in the Hands of a Jointreſs not to be deliver'd till Jointure confirmed.

The Plaintiff, as Heir at Law, brought a Bill againſt a Jointreſs for the Deeds and Writings that concerned his Eſtate; the Defendant inſiſted, that ſhe, having a Jointure ſettled on her of Part, ought not to diſcover or deliver up her Writings until her Jointure was confirmed: To which it was anſwered, the Jointure was made after Marriage, and not purſuant to any precedent Articles, but was purely voluntary. Per Cur'. Confirm the Jointure, or you ſhall not have the Deeds. 1 Vern. Rep. 479, 480.

A Jointreſs is not bound to anſwer what Title her Huſband had.

A Jointreſs is not bound to anſwer, whether her Huſband had no other Title than that as Aſſignee of a Mortgagee; ſhe denying ſhe had any Notice of the Mortgage, and inſiſting, that ſhe was in Nature of a Purchaſer from her Huſband without Notice; and that he told her he was in by Deſcent. 2 Vern. 701. Marriage is a good Conſideration to make a Jointreſs a Purchaſer, and a ſubſequent Settlement fraudulent as to the Jointure, &c. See 1 Chan. Ca. 99.

Jointure Covenant, omitted in the Settlement, decreed to be perform'd.

In the Lady Speke's Caſe, a Jointure was made in Purſuance of Articles, wherein there was a Covenant, that the Lands were of ſuch a Value, but this Covenant was left out in the Settlement; and yet it was decreed to be ſubſiſting, and that the Defendant ſhould perform the Covenant in Specie, but the Value of the Lands to be eſtimated as they were at the Time of the Jointure ſettled. 1 Vern. 217, 218.

Settlement ſhall be made according to the Intent of the Articles.

Where by Marriage Articles a Settlement is to be made, Chancery will order one, not according to the Letter, but Intent of the Articles. Lucas 437.

As where Huſband is Tenant in Tail by the Articles, yet the Court will decree him only to be made Tenant for Life.

As where by Marriage Articles Lands are agreed to be ſettled in ſuch a Manner as that the Huſband would be made Tenant in Tail; the Court will decree the Huſband to be made only Tenant for Life, that he may not have in his Power to bar the Iſſue, and to defeat the Intention of the Settlement. Lucas 436, 437. Mod. Ca. in Law and Eq. 161. S. C. Eq. Abr. 387. S. C. 1 Williams 622. S. C. See 106, 143, 391.

Settlement decreed to go according to the Articles.

A. entered into Articles, and made a Settlement in Purſuance thereof before his Marriage, but the Settlement varied from the Uſes in the Articles; and it was decreed to go according to the Articles. 1 Williams 123.

Huſband not obliged to amend his Security.

Where a Man articles to leave his Wife 1000 l. within three Months after his Death, he cannot be forced in Equity to amend his Security. 1 Williams 460.

Jointure, though made unequally, not to be ſet aſide.

A Settlement or Jointure on a Marriage, though made very unequally, and in Favour of the Wife, will not be ſet aſide in Equity, for that the Wife cannot be put in ſtatu quo. 2 Williams 619.

Huſband to make a Settlement on Wife, ſhe marrying without Conſent.

A Deviſe of a Portion, the Perſon to whom given marrying with Conſent of the Executors, &c. She married without ſuch Conſent,* and notwithſtanding the Portion was decreed to her with Intereſt; But the Huſband was not to have any Power to diſpoſe thereof, without firſt making a ſuitable Settlement on the Wife. Finch Rep. 145.

In what Caſes a Man ſhall be forced to make a Jointure or Settlement.

When a Huſband comes into a Court of Equity for his Wife's Portion, the Court will oblige him to make a Settlement upon her by Way of Jointure; or to ſecure a Maintenance for her if ſhe ſurvives him: And, in Caſe of ill Uſage of the Wife by the Huſband, will likewiſe decree, that her Fortune ſhall be put out at Intereſt for her ſeparate Maintenance in his Life-time, if ſhe be forced by the ill Treatment to live ſeparate from him. Lady Oxenden's Caſe, 2 Vern. Rep. 494.

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* In theſe Caſes, if the Legacy be not deviſed over, it is only in *Terrorem*; but where the ſame is deviſed over, it ſhall go there. 1 Chan. Rep. 58. See Conditions.

And when he ſhall have his Wife's Portion.

In all Caſes, where the Huſband makes a Settlement equivalent to the Wife's Portion, it ſhall be intended that he was to have the Portion, though there is no particular Agreement for that Purpoſe; the Law of this Court will preſume a Promiſe, and the Wife ſhall not have her Jointure and Fortune both. 2 Vern. 502.

Propoſals by the Huſband, to ſettle only Part of the Wife's Fortune on her, accepted by the Court.

A. marries an Infant, intitled to a large perſonal Eſtate, pending a Bill for an Account of ſuch Eſtate, and applies to the Court for the Wife's Portion; whereupon he is directed to make Propoſals before the Maſter: The Court accept the Propoſals from A. to ſettle only Part of her Fortune on the Wife and her Iſſue. 2 Williams (639).

Difference where the Huſband has a legal Title to the Wife's perſonal Eſtate, and where he cannot get at it without the Aſſiſtance of the Court.

Tho' where the Huſband has a legal Title to the Wife's perſonal Eſtate, Equity will not interpoſe in Prejudice of ſuch Right; yet where he cannot get at it without the Aſſiſtance of the Court, it will put Terms upon him. 2 Williams (641). See 1 Vern. 39.

Huſband injoined to ſue in the Spiritual Court for his Wife's Portion 'till he had made a Jointure.

A Man ſued in the Spiritual Court for his Wife's Portion; and the Court of Chancery granted an Injunction to ſtay Proceedings till ſuch Time as he had made a competent Jointure. Toth. 114.

Promiſe to give a Portion by Letter, good.

The Father, by Letter under his Hand, promiſed to give 1500 l. Portion with his Daughter; the Daughter married, and the Father was privy to it, ſeeming to approve thereof; he was decreed to pay the Portion. 2 Vern. 322. 2 Chan. Rep. 286. 2 Williams 65. But in a like Caſe of an Uncle's Promiſe to his Niece, the Plaintiff was diſmiſſed, and left to his Action at Law. See 2 Vern. Rep. 202.

Daughters intitled to reaſonable Portions by Settlement, Equity will not take away the Proviſion.

Lands were ſettled on Marriage upon the Huſband for Life, then to the Wife for her Jointure, and after her Death, to the firſt and other Sons in Tail Male, Remainder to the right Heirs of the Huſband; provided if A. and his Wife, or either of them, die, without Iſſue Male living at the Time of his or her Death, leaving one or more Daughters, Truſtees to ſtand ſeiſed 'till they have raiſed ſuch and ſuch Portions: A. the Huſband dies, leaving Daughters, and his Wife enſeint of a Son, who is afterwards born; and the Queſtion was, whether the Daughters were intitled to their Portions by the Settlement? Lord Keeper: If in this Caſe the Daughters, upon the Wording of the Deed of Settlement, become intitled to to a reaſonable Proviſion and Portion, I think Equity ought not to take it away. 2 Vern. 578, 579, 580. See Eq. Abr. Tit. Portions.

When a Term veſted may be ſold to raiſe Daughters Portions.

By Lord Chancellor Cowper: A Portion is directed to be paid to a Daughter at eighteen Years of Age, or Day of Marriage, and the Term is abſolutely veſted: there the Daughter ſhall not expect during the Life of the Father; but it may be ſold in the Father's Life, although it be a Term in Remainder, and not in Poſſeſſion. And he cited a Caſe, where a Condition precedent in a Settlement to the Veſting of the Term, if the Huſband and Wife ſhould die without Iſſue Male, and there ſhould be Daughters; there the Term veſted, although the Mother was living. Corbet and Maydwell, 2 Vern. 655, 656, 658. See Eq. Abr. Tit. Portions.

Private Agreements, Marriage-brocage Bonds, &c. void.

*Note* this Difference.

A private Agreement to pay back Part of a Portion, and Marriage-brocage Bonds, for procuring Marriage, &c. are void in Equity: But ſome Chancellors have made a Difference between the Caſe of a young Maiden and a Widow of ſome Age, as to theſe Bonds; in one Caſe ſuch Bond ſhall be ſet aſide, but not in the other. 2 Vern. Rep. 466, 500. 2 Chan. Ca. 176, 177.

So Leaſes, Aſſignments, &c.

In Colonel Brett's Caſe, a Leaſe granted for undertaking to procure a Marriage between Mr. Thynn and the Lady Ogle, being decreed to be good, after two Verdicts at Law for the Defendant, was on Appeal to the Lords in Parliament ſet aſide and declared void. 2 Vern. 446. Aſſignment of a Leaſe adjudged fraudulent. Ibid. 466. See Eq. Abr. 88, 89, 90.

# Leaſes.

## Aſſignments.

Leſſee injoined from digging the Ground.

A. Leſſee for Years, without Impeachment of Waſte, Remainder to the Biſhop of London, upon a Bill brought by the Biſhop, was injoined from digging the Ground for Brick. 1 Williams 527.

What Leſſee without Waſte may or may not do.

Leſſee for Years, without Waſte, cannot pull down an Houſe, or the Trees that are a Defence or Ornament to the Houſe, but, may open Mines. 1 Williams 528.

College reſtrained by its Conſtitution from making any Leaſes, except for twenty-one Years, and at Rack Rent, makes Orders, recommending it to their Succeſſors to renew at leſs than the Rack-Rent; this not favour'd, as tending to a Breach of the Statutes.

A College was ſeiſed in Fee of Lands in Right of the College, and the Statutes relating to the Conſtitution of it reſtrain from making Leaſes of the Lands, other than for twenty-one Years at the Rack-Rent. The College made a Leaſe to J. S. for twenty-one Years at the Rack-Rent; the Leſſee improved the Premiſſes; and at the College Audit an Entry was made in the Regiſter, by which, in Conſideration that J.S. had built two Houſes, and thereby had improved the Premiſſes, therefore it was recommended, that at the End of the Leaſe the College ſhould make him a new Leaſe for twenty-one Years, at the antient Rent, without raiſing it; and this Entry was ſigned by the Maſter-Warden and moſt of the Fellows: Afterwards, upon J. S.'s applying for a new Leaſe, the College, at the Audit held about Half a Year before the Expiration of the old Leaſe, made an Order, that J. S. ſhould have a new Leaſe at the old Rent, and under the ſame Covenants as the former; and this Order was ſigned by the Maſter-Warden, and moſt of the Fellows: J. S. died Inteſtate about the Time of the next Audit, which was three Weeks before the Leaſe expired; whereupon the Widow, as Adminiſtrator, applied at the Audit following after for a new Leaſe, but being refuſed brought her Bill for that Purpoſe. And Lord Chancellor ſaid, the Maſter-Warden betrayed his Truſt in relation to the College, and had acted inconſiſtently with the Oath he had taken; That he did not like the Recommendation made by the Maſter-Warden and Fellows, to make a new Leaſe to the Inteſtate at the old Rent; it being no leſs than a Recommendation to their Succeſſors to wrong the College, and break their Statutes, which ſay, that no Leaſe ſhould be made but at Rack-Rents: And as to the Signing of the Maſter-Warden and Fellows, that could not be ſuch a Contract as bound the College; for a Contract to bind that muſt be under its common Seal; wherefore the Bill was diſmiſſed with Coſt. 1 Williams 655.

The Reaſon why Leaſes for Life were preſumed to have a longer Continuance than any Term for Years.

Anciently there were no Leaſes for Years but what were for ſhort Terms, which were little regarded; this was the Reaſon why if a real Action was brought againſt the Perſon who had the Freehold, and a Recovery was thereupon had, though by Covin, yet the Leſſee for Years, whoſe Eſtate was precedent to the Freehold, was bound by this Recovery, and could not falſify, till the Statute 21 H. 8. cap. 15. and therefore the Leaſes for Years uſually made being but ſhort, a Life was preſumed to have a longer Continuance than any Term; and therefore a Deviſe of ſuch a Term after a Life was void. 1 Williams 574, 575.

For what Time Leſſor ſhall be decreed to renew.

A. poſſeſſed of a long Term for Years, made a Leaſe to B. for five Years, and covenanted for himſelf and his Executors, to renew the Leaſe at the ſame Rent and on the ſame Covenants, upon the Requeſt of B. within the Term; B. died within the Term, having laid out a conſiderable Sum in Improvements, and the Executors within the Term requeſted A. the Leſſor to make a new Leaſe for fifty Years, at the old Rent. Lord Chancellor decreed Leſſor to renew, but not for ſo long as was requeſted, but for twenty-one Years, that being the uſual Term for leaſing. 2 Williams 196.

Forfeiture of Leſſee not relieved againſt.

Where a Man makes a Leaſe for Life or Years, upon a Condition of Re-entry for a Forfeiture, or that the Leaſe ſhall be void, if the Leſſee aſſigns or aliens it without Licence, and afterwards the Leſſee doth aſſign it without Licence; this is a Forfeiture; and ſuch a Forfeiture againſt which this Court cannot relieve, becauſe it is unknown what ſhall be the Meaſure of the Damages; for the Court never relieves but in ſuch Caſes where it can give ſome Compenſation in Damages, and where there is ſome Rule to be the Meaſure of ſuch Damages, to avoid being arbitrary. Mod. Ca. in Law and Equity 113.

Leaſe made by Husband and Wife, how conſtrued.

If a Woman ſeiſed of an Eſtate for Life, with a Power to make a Leaſe for three Lives or twenty-one Years, marries, and ſhe and her Husband join in making the Leaſe, and both die before the Leaſe is expired; here, though the Husband in Right of his Wife, and ſhe in her own Right, are poſſeſſed of an Eſtate for Life, and therefore can, as Owners, make a Leaſe, and there appears no Intention of the Parties, (imagining perhaps they ſhould have out-lived the Leaſe,) that this Leaſe ſhould be made by Virtue of the Power; yet becauſe the Leaſe, ſuppoſing it made by them as Owners, cannot have all the Effect the Parties intended, for ſome it would have, (it would be a good Leaſe during the Lives of the Huſband and Wife,) yet, becauſe it cannot have all, it ſhall be eſteemed made by Virtue of the Power. Lucas 36.

Leaſe good, tho' for more Years than the Leſſor hath.

A Leaſe for a greater Number of Years, than the Leſſor had Power to grant, ſhall be good in Equity for ſo many Years as he had Power therein: So that where a Perſon hath Power to leaſe for ten Years, and he leaſeth for twenty Years, the Leaſe ſhall be good for ten Years of the Twenty. 3 Chan. Rep. 11. 1 Chan. Ca. 23.

A Leaſe renew'd ſubject in Equity to a Mortgage.

Where a Leaſe for Years mortgaged, near expiring, was renewed by the Mortgagor's Executors, it was decreed that the new Leaſe, allowing the Charges, ſhould be aſſigned to the Plaintiff, and made ſubject to the Payment of the Mortgage-Money and Intereſt. Finch's Rep. 393, 394.

Leaſe for Years in Truſt, and Aſſignment in Truſt to make a Tail, Difference.

If a Leaſe for Years be limited in Truſt for Heirs Male, &c. the Limitation is void in Law, and the Term ſhall go to the Executors or Adminiſtrators: But an Aſſignment of a Leaſe, with Limitations in Tail, and Remainder over in Truſt, though it be void in Law, it has been held good in Equity * by the Intent. 1 Ch. Rep. 16. 2 Ch. Rep. 58.

Leaſes to attend the Inheritance belong to the Heir.

The Heir ſhall have a Leaſe aſſigned to attend the Inheritance, and not the Executor: And a Leaſe waiting on the Inheritance, where it is not Aſſets in Law, is not Aſſets in Equity. 2 Chan. Ca. 156, 49.

Leaſes Aſſets.

Leaſes deviſed by Will are Aſſets to pay the Teſtator's Debts; notwithſtanding the Aſſent of the Executor to the Deviſe of them. 1 Chan. Ca. 257.

Where the Inheritance gone, how Leaſes to attend it ſhall go.

Queſtion was, Whether the Inheritance of the Land being gone and made void, the Leaſe which was to attend

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* See *Perpetuity*.

attend it ſhould go according to Uſes declared by Covenant to ſtand ſeiſed? Decreed in this Caſe, that it being a Settlement on Marriage, and ſo on a Conderation, it ſhould go to the Wife for ſo many Years as ſhe lived. 1 Chan. Ca. 47.

Where a Truſt-Term ſhall not be attendant on the Inheritance, but ſevered from it.

A. ſeiſed in Fee of an Eſtate, demiſed to B. his Executors, &c. for ninety-nine Years, in Truſt for himſelf and his Wife for their Lives, and the Life of the Survivor, and after the Death of the Survivor, in Truſt for the Heirs of their two Bodies; and in Default of ſuch Iſſue, in Truſt for the Heirs of the Body of A. and in Default of ſuch Iſſue, in Truſt for the Heirs of the Survivor of Husband and Wife: A. and his Wife had Iſſue a Son, A. dies, and afterwards the Son dies without Iſſue; the Wife adminiſtred to her Husband and Son, and aſſigns the Term to C. The Queſtion was, who was intitled to the Truſt of this Term, whether it was attendant on the Reverſion, and ſo belonged to the Plaintiff as the Heir at Law of A. who was intitled to the Reverſion in Fee expectant on this Term, or to the Defendant C. as Aſſignee of the Wife. The Maſter of the Rolls decreed the Title to belong to the Aſſignee of the Wife, and that this Term ſhould not be attendant on the Inheritance; for that the Party who raiſed the Term, and had Power to ſever it from the Inheritance, ſhew'd his Intention ſo to do, by limiting the Truſt to the Survivor of him and his Wife, and the Heirs of the Survivor, which though it was a void Limitation, yet ſufficed to ſhew his Intent to ſever ſuch Term from the Reverſion. 1 Williams 360.

Under-Leſſee is not bound by Leſſee's Covenant to repair.

A Leaſe was made for a long Term of Years, and in the Leaſe there was a Covenant that the Leſſee ſhould repair; the Leſſee makes an Under-leaſe to J. S. who is in Poſſeſſion; the Under-leſſee is not bound by this Covenant in Equity, there being no Aſſignment of the Term, but the proper Remedy is againſt the firſt Leſſee and his Executors, &c.

When a Leſſee liable for Rent, tho' he aſſigns.

If a Man makes a Leaſe, rendring Rent, and the Leſſee aſſigns to an inſolvent Perſon, the Leſſee in Equity ſhall be liable to pay the Rent. Goddard verſus Keate, 1 Vern. Rep. 87, 88.

Leſſee denied any Relief on Breach of Covenant.

If a Leſſee for a long Term of Years covenants to lay out 200 l. upon the Premiſſes within the firſt ten Years, and lays out but 30 l. and after thirty Years of the Leaſe are expired, the Leſſor brings an Action of Covenant, and recovers 150 l. Damages;

Equity will neither relieve againſt the Damage, nor decree the Money to be now laid out in Improvements; for per Lord Chancellor, though the Damage ſeems exceſſive, yet the Jury were proper Judges; and to decree it to be laid out now the Leaſe is almoſt expired is not proper; for it is probable the Leſſee would not be ſo careful in laying it out in laſting Improvements, as he would be were it laid out at firſt. 1 Vern. 316, 317.

Equity will not intermeddle in Leaſes for Breach of Covenants, where Parties have agreed the Damage.

The Plaintiff let a Farm to the Defendant by Leaſe at an annual Rent, and the Defendant covenanted, amongſt other Things, not to plough any of the Paſture-Land; and if he did plough up any Part of it, that he would pay after the Rate of (a) twenty Shillings per Acre per Annum: But the Defendant ploughing up ſome of the Paſture, an Injunction was moved for. The Court would not grant any Injunction; and declared, if the Defendant was Plaintiff to be relieved againſt paying 20s. an Acre for Ploughing, they would not relieve him. 2 Vern. 119.

Leaſes of Infants decreed.

Long building Leaſes of Infants Eſtates, where for their Benefit, have been often decreed by the Court of Chancery. Ibid. 225.

(a) Here was no Room for Equity, the Parties themſelves having agreed the Damage, and ſet a Price for the Ploughing.

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# Mortgages and other Securities.

## *See* Deeds fraudulent.

A Mortgage is the ſame Thing as the Hypotheca of the Civilians, and may be defined a Pledging of Lands or other immoveable Thing for Money lent in ſuch Manner, that the Profit or Uſufructus of the Thing pledged remains with the Debtor till ſuch Time as Default is made in Payment of the Money at the Time appointed. Eq. Abr. 310, 311.

How Mortgagee to be ſatisfied when the mortgaged Premiſſes fall ſhort in Value, and Mortgager becomes a Bankrupt.

Plaintiff lent a Sum of Money on the Mortgage of ſome Houſes, and had a Bond for Payment of the Money; afterwards he lent a farther Sum on the Equity of Redemption, and had a Bond for that likewiſe; afterwards the Mortgagor becomes a Bankrupt, and by ſome Accident the Value of the Houſes ſunk ſo much, that they were not ſufficient to raiſe the Money firſt lent: And on a Bill brought to have them ſold, and that, as to ſo much as they fell ſhort to anſwer the firſt Mortgage-Money, the Mortgagee might come in upon his Bond as a Creditor; and it was ſo decreed; and as to the other Sum lent upon the Equity, which was worth nothing, it muſt ſtand ſingly upon the Bond. Eq. Abr. 312.

A Mortgage may be made without a Covenant or Bond for Payment of the Money. 1 Williams 270.

Mortgagee without Notice ſhall hold againſt an intended Purchaſer.

If A. agrees for a valuable Conſideration to convey Lands to J. S. and afterwards make a Mortgage for a valuable Conſideration, and without Notice, the Mortgagee ſhall hold his Mortgage againſt the intended Purchaſer. 1 Williams 277.

Where the firſt Mortgagee ſhall be poſtponed.

When a firſt Mortgagee is a Witneſs to the ſecond Mortgage, tho' there is no actual Proof of his knowing the Contents thereof, yet, ſince the Preſumption is that he might have known the ſame, this ſhall poſtpone him. 1 Williams 394.

Once a Mortgage and always ſo, but an Aſſignment new.

It is a general Rule in Chancery, that once a Mortgage and always a Mortgage. An old Mortgage aſſigned to another ought to be taken as a new Mortgage; but no Aſſignee of a Mortgage ſhall be in a better Condition than the Mortgagee, unleſs the Mortgagor come into the Aſſignment. 3 Ch. Rep. 79. 1 Chan. Ca. 218.

Principal and Intereſt Money paid upon aſſigning is all Principal.

A Mortgagee had aſſigned his Mortgage; and the Queſtion was, if what was really due to the Mortgagee, when he aſſigned, for Principal and Intereſt, and paid him by the Aſſignee, ſhould be taken as Principal, or ſo much only as the Mortgagee firſt lent? Decreed, that all Money actually paid by the Aſſignee, which was due to the Mortgagee, ſhould be Principal from the Time of the Aſſignment; but the Account between the Mortgagee and Aſſignee, was not to conclude the Mortgagor. Smith's Caſe, 1 Chan. Ca. 67, 68.

Where Intereſt ſhall not carry Intereſt.

Where a Mortgagor ſigns an Account, whereby ſo much is admitted to be due for Intereſt; this will not carry Intereſt, unleſs the Mortgagor by ſome Letter or Writing under his Hand agrees to make it Principal. 1 Williams 653.

Intereſt apportioned.

Equity apportions Intereſt due upon a Mortgage. 2 Williams 176.

No Intereſt on Intereſt on Mortgages, in Equity:

But has been allow'd for Intereſt reſerved in the Deed.

If a Mortgage be twenty Years old, it is generally ſaid, that the Mortgagee ſhall have no Intereſt on Intereſt, in Equity: But in the Caſe of Howard and Harris, the Lord Keeper was of Opinion, and accordingly decreed, that as to ſo much Intereſt as was reſerved in the Deed of Mortgage, being 60l. a Year, payable for 1000l. Principal Money, that ſhould be accounted Principal and carry Intereſt; becauſe it being aſcertained by the Deed, Action of Debt would lie for it, and therefore there ought to be Damages for Non-payment. This was very much oppoſ'd, as being contrary to the Precedents of the Court. 1 Vern. Rep. 191, 195.

And on a forfeited Mortgage Intereſt for Intereſt ſhall be paid.

In Hillary Term 26 & 27 Car. 2. It was declared to be a Rule, that a Mortgagee of a Mortgage forfeited ſhould have Intereſt for his Intereſt; and ſhould be only accountable for what Profits he received, and not for what he might have receiv'd, except there were Fraud: And it was always the Rule, That the Mortgagee aſſigning, the Aſſignee ſhall have Intereſt for the Intereſt then due. 1 Chan. Ca. 258.

Intereſt made Principal.

J. S. mortgaged his Eſtate to the Plaintiff and died, leaving Defendant his Daughter and Heir, who was an Infant, and had nothing to ſubſiſt on but the Rents of the mortgaged Eſtate; and the Intereſt being ſuffered to run in Arrear, the Plaintiff threatned to enter on the Eſtate, unleſs his Intereſt might be made Principal; upon which the Defendant's Mother, with the Privity of her neareſt Relations, ſtated the Account, and the Defendant herſelf (who was then near of Age) ſigned it; and, the Account being admitted to be fair, it was held, that tho' regularly Intereſt ſhould not carry Intereſt, yet that in ſome Caſes, and upon ſome Circumſtances, it would be Injuſtice if Intereſt ſhould not be made Principal; and the rather in this Caſe, becauſe it was for the Infant's Benefit, who, without this Agreement, would have been deſtitute of Subſiſtence. Decreed and affirmed by Lord Keeper Wright. Eq. Abr. 287.

Where Intereſt loſt upon Tender and Refuſal.

But if a Mortgage be forfeited, and the Mortgagee refuſes to receive his Money due from the Mortgagor on Tender, he ſhall loſe his Intereſt from the Time of the Tender. 1 Chan. Ca. 29. A Deed was in Nature of a Mortgage, with Covenant to reconvey, on paying the Money, which was tendered at the Day and Place, and refus'd: Decreed the Money without Intereſt from the Tender, and to reconvey the Land, &c. but that the Plaintiff ought to make Oath that the Money was kept, and no Profit made of it. 2 Chan. Ca. 206.

Where a Tender of the Mortgage-Money is good tho' not made to the Perſon of the Mortgagee: But to prevent Intereſt running on after the Tender, it muſt appear Mortgagor from that Time always kept the Money ready to pay Mortgagee.

Plaintiff's Bill was to compel a Re-aſſignment of a Mortgage from the 25th of September 1722. there having been then a Tender made of 1000 l. Mortgage-Money and Intereſt. It appeared, that on the Day before the 25th of March 1722. the Mortgagor gave perſonal Notice in Writing to the Defendant the Mortgagee, that he would tender the Money and Intereſt between the Hours of ten and twelve in the Morning at Lincolns-Inn Hall, on the 25th of September 1722. which accordingly was done. It was objected, that Lincolns-Inn Hall was not named in the Proviſo in the Mortgage-Deed, as the Place for the Payment of the Money, and therefore the Tender muſt be to the Perſon.

Lord Chancellor: The Money being lent in Town, and after perſonal Notice given for the Payment thereof, and no Objection made by the Mortgagee to the Place at the Time of the Notice, it would be very hard to make the Mortgagor travel with this great

Sum of Money where the Mortgagee lived: But in this Caſe it ought to appear, that the Mortgagor from that Time always kept the Money ready, whereas the contrary thereof being proved, that the Mortgagor was not ready to pay it, therefore the Intereſt muſt run on; and decreed the Defendant to re-aſſign. 2 Williams 378.

And Money intended ſatisfied on a ſleeping Mortgage, where no Demand, &c.

Mortgage-Money ſhall be preſumed to be ſatiſfied on a ſleeping Mortgage, where the Lands go into other Hands by Purchaſe, and no Notice is given of the Mortgage, &c. And the Deed of Mortgage ſhall be delivered up and cancelled. Alſo Relief hath been given in Equity againſt an old Mortgage, where no Demand was made upon it in forty Years; and the Mortgagor decreed to hold the Lands, and a Vacat to be entered on the Inrollment of the Mortgage. 1 Chan. Rep. 105, 106.

Mortgages Part of the perſonal Eſtate, and why.

All Mortgages ought to be looked on as Part of the perſonal Eſtate, and on the Death of the Mortgagee, the Money ſhall be paid to the * Executor; except the Mortgagee in his Life-time, or by his laſt Will, do otherwiſe declare and diſpoſe of the ſame. 1 Chan. Ca. 286. See Max. Eq. 21, 22. Eq. Abr. 326, 327.

* Becauſe the Mortgage-Money came firſt out of the perſonal Eſtate, and therefore ſhould return thither again.

But may go to Heirs by particular Deviſe.

A forfeited Mortgage in Fee hath been decreed to be perſonal Eſtate, and to belong to the Executor, and not to the Heir. 1 Chan. Rep. 283. 1 Vern. 412. But where a Mortgage in Fee was deviſed to Daughters and their Heirs, &c. the Court held, that although it was a Mortgage, as between the Mortgagor and Mortgagee; yet the Teſtator's Intent was it ſhould paſs to his Daughters as a real Eſtate, to them and their Heirs, and not as a perſonal Eſtate; and ſo decreed it to deſcend. 1 Vern. 582, 583.

So on a Purchaſe.

So where a Mortgagee in Fee entered for a Forfeiture, and after many Years Enjoyment ſold the Land to J.S. and his Heirs. Per Cur': The Eſtate ſhall not be looked on to be a Mortgage in the Hands of J.S. to make it Part of his perſonal Eſtate, but ſhall be for the Benefit of the Heir. 1 Vern. Rep. 271.

New Mortgage decreed where former bad.

A ſecond Mortgage of Lands has been decreed, where a former was bad and defective, the Land being ſtill chargeable with the Debt in Equity. And it hath been held, that if a prior Mortgagee conceals and denies his Mortgage to a ſecond Mortgagee before he lends the Money, the Eſtate in Equity ſhall ſtand

charged

charged in the firſt Place for the ſecond Mortgagee's Debt. Finch Rep. 29. 2 Vern. 554.

Where the ſecond Mortgagee ſhall be preferred to the firſt.

Where the firſt Mortgagee is a Witneſs to the ſecond Mortgage, though it does not appear that he actually knew the Contents of the ſecond Mortgage, yet, ſince the Preſumption is that he might have known the ſame, this ſhall give a Preference to the ſecond Mortgage. 2 Williams 394.

What Notice ſhall affect a ſecond Mortgagee.

If a Man lends Money on a Mortgage, and the Scrivener, who was intruſted to draw the Mortgage-Deed, had Notice of a prior Mortgage, this Notice ſhall affect the ſecond Mortgagee. 2 Vern. 574.

When firſt, ſecond and third Mortgages, firſt Incumbrances bought in to protect them.

There were firſt, ſecond and third Mortgagees, who had all lent their Money without Notice; the third Mortgagee, hearing of the two former Securities, buys in the firſt Incumbrance, viz. a Jusgment that was ſatisfied: And he was allowed the Benefit of it, to protect his own Security; tho' it was ſtrongly inſiſted to be againſt Conſcience, and contrary to Equity. This Point was ſettled in the Caſe of Marſh and Lee; wherein the Court decreed, that a Mortgagee may protect his Mortgage, by getting in an old Incumbrance, tho' nothing be due on it. 1 Vern. Rep. 187, 188. 1 Chan. Ca. 162. 2 Vent. 337. Hard. 173.

And Lands held 'till Money on both Securities is ſatiſfied.

And it has been reſolved, that a Mortgagee buying in a precedent Security of the Lands contained in his Mortgage and other Lands, ſhall hold againſt a middle Mortgagee of thoſe Lands, 'till all due on both Securities be paid and ſatisfied. 1 Chan. Ca. 201, 202. In theſe Caſes, a Bill may be brought to compel the middle Mortgagee to redeem, or be forecloſed, if he do not pay off both Securities.

If ſecond Mortgagee buys in an old ſatisfied Incumbrance, he need not prove Payment of any Money for it.

If a Man lends 600l. on a Mortgage, and afterwards, diſcovering that the Eſtate is pre-mortgaged to J. S. he gets in an old ſatisfied Incumbrance, and brings his Bill againſt J. S. to redeem, or be forecloſed; he need not prove the actual Payment of any Money for ſuch precedent Incumbrance, the having the Deed or an Acquittance being ſufficient; altho' it is objected, that J. S. is equally a Purchaſer with him. 2 Vern. 279.

Prior Mortgage bought in *pendente lite*.

If a prior Mortgage or Statute be bought in pending a Bill brought by A. againſt the Mortgagor and B. who buys in ſuch precedent Statute or Mortgage, to forecloſe; tho' this Purchaſe be pendente lite, yet it will protect B. he being at Liberty to do what he can for his own Security. 2 Vern. 29. See Mod. Ca. in Law and Eq. 153.

But

Where a prior Mortgage bought in ſhall not protect a ſubſequent Mortgage.

But where A. made a Mortgage to B. and afterwards a Commiſſion of Bankruptcy was taken out againſt him, and the Commiſſioners made an Aſſignment of the Eſtate, and then C. lent the Bankrupt 2000 l. on a ſecond Mortgage, having no Notice of the firſt; tho' he afterwards got in the firſt Mortgage, yet it was held by two Lords Commiſſioners againſt one, that this prior Mortgage ſhould not protect the Mortgage ſubſequent to the Bankruptcy, for every one is bound to take Notice of a Commiſſion of Bankruptcy. 2 Vern. 157, 160.

In what Caſe Mortgagee cannot protect himſelf, and where he ſhall be only a Truſtee.

And tho' a Purchaſer or Mortgagee may buy in an Incumbrance, or lay hold on any Plank to protect himſelf, yet he ſhall not protect himſelf by the taking a Conveyance from a Truſtee, after he had Notice of the Truſt; for by taking ſuch Conveyance he becomes the Truſtee himſelf. 2 Vern. 271.

In what order Mortgages, Judgments, &c. paid.

Mortgages have been decreed to be paid to Creditors before Judgments and Recognizances, &c. But on Appeal to the Lords it was adjudged, that Mortgages ſhould not be preferr'd to other real Incumbrances; but Mortgages, Judgments, Statutes, &c. ſhould take Place and be paid according to Priority. 2 Vern. 525.

If Lands are deviſed in Truſt to pay Mortgages in the firſt place, and then Legacies, and the Truſtee is made Executor, who mortgages the Lands to pay other Debts, the laſt Mortgage ſhall be paid before the Legacies.

## Mortgages redeemed in Equity.

Equity of Redemption cannot be confined.

IN the Caſe of a Mortgage no Clauſe can confine the Equity of Redemption to the Life-time of the Mortgagor, or to him and the Heirs Male, or the Heirs only of his Body. 1 Williams 269.

Bill will not lie to redeem a Mortgage of Chambers.

A Bill in Equity will not lie to redeem a Mortgage of Chambers in the Inns of Court, but the Plaintiff muſt apply to the Bench, or to the Judges of the Society; ſecus if on Application to the Bench they refer the Plaintiff to his Remedy in Equity. 1 Williams 511.

New Term gain'd ſince the Mortgage is ſubject to the old Equity of Redemption.

One poſſeſſed of a renewable Term mortgages it to J. S. who gains a new Term from the original Landlord, to commence after the old one; this new Term ſhall be ſubject to the old Equity of Redemption. Ibid.

Where Creditors ſhall redeem.

A Bill was exhibited by the Creditors of a Mortgagor, to have the Eſtate ſold for the Payment of their Debts, pending which Suit the Mortgagee obtained a Decree to foreclose the Mortgagor of the Equity of Redemption.

The Court decreed, that the Creditors ſhould redeem upon Payment of the Principal, Intereſt and Coſts to the Mortgagee. Mod. Ca. in Law and Eq. 153.

Bill by the Heir of Mortgagor to redeem diſmiſſed, being barred by the Statute of Limitations.

The Plaintiff's Grandfather in *1686.* mortgaged the Eſtate in Queſtion about 10l. per Annum for ſecuring 100l. in *1696.* this Mortgage was aſſigned to Defendant, who was let into Poſſeſſion, and continued ſo ever ſince, and was now about ninety Years old: The Mortgagor died ſeveral Years ſince, leaving the Plaintiff's Father his eldeſt Son of full Age, who likewiſe died in 1714. leaving the Plaintiff his Son and Heir, then about twelve Years of Age, who brought his Bill for a Redemption, but was diſmiſſed; and Lord Chancellor ordered it to be entered down as one of the Reaſons for diſmiſſing the Bill, that the Plaintiff had no Remedy by Ejectment at Law to recover the Poſſeſſion, being barred by the Statute of Limitations; and he thought that a reaſonable Ground for this Court to follow as to the Redemption in Equity. Eq. Abr. 315. But ſee 1 Williams 271. where, if a Mortgage was made never ſo many Years ſince, yet if the Mortgagor, and thoſe claiming under him, had continued to pay Intereſt, the Length of Time was in ſuch Caſe no Objection to the Right of Redemption. See Eq. Abr. 313, 314, 317.

Mortgages redeemable in their Nature.

No Agreement in a Mortgage can make it irredeemable in Equity, as after the Death of the Mortgagor, &c. And where a Mortgage was made redeemable during the Mortgagor's Life only, the Lord Chancellor decreed that the Heir ſhould redeem. 2 Ch. Rep. 147. 1 Vern. Rep. 7, 8, 190.

Second Mortgagee may redeem a Firſt.

A ſecond Mortgagee may redeem the firſt (a) Mortgage; alſo Creditors on Judgments, &c. have been decreed to redeem Mortgages towards Satisfaction of their Debts. 2 Ch. Rep. 396.

(a) By Statute, Perſons having once mortgaged Land, if they mortgage it a ſecond Time, without diſcovering the firſt Mortgage, or giving Notice of Judgments, the Mortgagor ſhall loſe his Equity of Redemption, and the ſecond Mortgagee, *&c.* may redeem. *4 & 5 W. & M. c. 16.*

Who may redeem.

One who comes in by a voluntary Conveyance may redeem a Mortgage. 1 Vern. 193. Admitted, he who comes to redeem a Mortgage muſt ſhew a Title. 1 Vern. 182.

If a Man enters into a Bond, in which he binds himſelf, and his Heirs, and dies, leaving a real Eſtate to deſcend to his Heir, ſubject to a Mortgage for Years, and the Heir ſells the Equity of Redemption; the Obligee cannot redeem the Mortgage, without firſt having a Judgment at Law. Eq. Abr. 315.

A. gives a Bond to his intended Wife, to leave her 1000 l. if ſhe ſurvived him; the Marriage was had, and A. died, leaving a Freehold and Copyhold Eſtate in Mortgage; and it was held, that the Wife ſhould redeem both Eſtates, and hold over till ſhe was ſatiſfied. 2 Vern. 486.

Where Mortgagor cannot redeem one Mortgage without the other.

If A. mortgages his Tenement for 200 l. to B. and afterwards mortgages his Manor of C. to B. likewiſe for 300 l. the firſt Mortgage being deficient in Point of Value, it was held, that if A. will redeem one he muſt both. 2 Vern. 286.

Where one has a Bond and Mortgage from the ſame Perſon, he cannot tack them together againſt Mortgagor. *Secus* againſt the Heir or Deviſee of the Equity of Redemption.

If a Man has a Debt owing to him by Mortgage, and another by Bond, from the ſame Perſon, he cannot tack them together againſt the Mortgagor; but he ſhall be let into a Redemption, on Payment of the Mortgage-Money only; but the Heir in ſuch a Caſe ſhall not be let into a Redemption without paying both; becauſe the Land in his Hands is chargeable with the Bond even at Law; and ſince the Statute againſt fraudulent Deviſes, the Deviſee of the Equity of Redemption is in the ſame Caſe with the Heir, and cannot redeem without Payment of both; becauſe the Statute makes ſuch Deviſe void as againſt Creditors, and then the Deviſee ſtands in the ſame Place as the Heir muſt have done if no Deviſe had been made; but before that Statute ſuch Deviſee would not be liable to the Bond-Debt. Eq. Abr. 325.

Where an Aſſignee of the Equity of Redemption ſhall redeem, paying only the Mortgage-Money.

A. mortgaged his Eſtate to B. and then aſſigned the Equity of Redemption to C. afterwards D. obtained a Judgment againſt A. and B. the Mortgagee aſſigns to D. his Mortgage, and then C. tenders the Money due to D. who had Notice of the Aſſignment of the Equity of Redemption upon his purchaſing in his firſt Mortgage. It was reſolved that C. ſhould redeem, paying only the Money due on the Mortgage, and not what was due on the Judgment; becauſe the Equity of Redemption was never bound by the Judgment; for the Judgment was not confeſſed, ſo as to become a real Lien upon the Eſtate, at the Time when this Equity was aſſigned, and therefore the Judgment could never charge or affect it; and conſequently C. purchaſed an Eſtate not bound by the Judgment; and by Conſequence the Judgment-Creditor, by purchaſing in the prior Mortgage, could never defeat the Intereſt of C. Eq. Abr. 326.

Or a meſne Mortgagee.

It was alſo declared, that if a Perſon who had a firſt Mortgage ſhould, without the Conſent of the Mortgagor, purchaſe in a ſubſequent Judgment, that a meſne Mortgagee or Aſſignee of the Equity of Redemption ſhould not be obliged to pay the Money due on both Securities in order to redeem; becauſe ſuch Tranſaction of the Mortgagee was only to load the Eſtate without the Conſent of the Owner, when he had no Proſpect of bettering his own Security. Ibid.

Where Mortgagor became a Lunatick, and his Committee took up more Money.

A. mortgaged a good Part of his Eſtate for 50 l. and afterwards became a Lunatick, and his Committee tranſferred this Mortgage, and took up 400 l. more upon it; and Lord Chancellor declared the Mortgage ſhould ſtand as a Security for the 50 l. only. 1 Vern. 262.

Where there are two Mortgages, or Mortgage and Bond, both to be redeem'd or neither.

Where there is a Debt ſecured by Mortgage, and likewiſe a Bond-Debt, the Mortgagor, or his Heir, ſhall not be admitted to redeem the Mortgage, without paying the Bond-Debt too, if the Heir be bound. 2 Ch. Rep. 23. 1 Vern. 244. 2 Vern. 177. Eq. Abr. 314. And if a Man makes two Mortgages of ſeveral Lands, and dies, and one of the Mortgages is of an intailed Eſtate, or deficient in Value, the Heir of the Mortgagor ſhall not redeem one without redeeming the other. 2 Vern. Rep. 207.

Fit Time to redeem Mortgages is twenty Years.

In Pearſon's Caſe the Lord Keeper ſaid, he would have a Rule to limit to what Time a Mortgage ſhall be redeemable; and he conceived twenty Years to be a fit Time, in Imitation of the Statute of Limitation of Real Actions. 1 Chan. Ca. 102.

Redemption allow'd after fifty Years, where Time excus'd.

But a Mortgagor was allowed to redeem a Mortgage after fifty Years; the Length of Time being excuſed by Infancy, Coverture, an Account made up thirty Years before, &c. tho' this hath been denied in a like Caſe by Reaſon of the Difficulty of the Account, and great Length of Time. 2 Vern. Rep. 377, 418.

Mortgages redeem'd before the Day, and after Foreclosure, on extraordinary Circumſtances.

A Mortgagor had Liberty to redeem, before the Day of Payment limited in the Deed of Mortgage, where the Land was conveyed to the Mortgagee conditionally at ſo much Rent, and the increaſing Rent exceeded the Intereſt of the Money; and altho' the Equity of Redemption of Lands mortgaged was foreclosed by Decree ſigned and inrolled, and a Purchaſe made upon it; yet another Perſon was permitted to redeem, on the extraordinary Circumſtances of the Caſe. 1 Vern. 183. Finch's Rep. 406, 409.

Decrees to foreclose bind Iſſue in Tail; and when Infants bound.

Decree to foreclose * Tenant in Tail ſhall bind his Iſſue in an Equity of Redemption; becauſe that is a Right ſet up only in a Court of Equity, and ſo may be here extinguiſhed. 1 Chan. Ca. 220. Yet if there be an Infant in the Caſe, he ought not to be foreclosed without a Day to ſhew Cauſe after he comes of Age: But the Court may decree the Lands to be ſold to pay Debts, and that will bind the Infant. 1 Vern. Rep. 295.

* See for the more eaſy Redemption and Foreclosure of Mortgages, Statute 7 Geo. 2. c. 20.

Redemption of an Annuity.

If an Annuity be granted out of Lands, redeemable on Payment of Money; the Grantor cannot be foreclosed of the Land, but he may of the Redemption of the Annuity. 1 Vern. 209, 210.

## Mortgages uſurious.

Upon a uſurious Agreement and Mortgage, the Redemption of Lands decreed.

THE Plaintiff being poſſeſſed of a reverſionary Term for thirty-ſix Years, to commence in the Year 1700, of the Value of about 200l. per Annum, when the Eſtate ſhould fall, in the Year 1683 borrowed of the Defendant 200l. as a Security for which the Plaintiff aſſigned his Term to the Defendant, defeaſanced to be void on Payment of 40l. per Annum for eight Years: The Plaintiff's Bill was to redeem, paying Principal, Intereſt and Coſts; and the Defendant inſiſted on the Benefit of his Bargain, having lent his Money on ſuch a remote Reverſion.

On Payment of Principal and common Intereſt.

Per Cur': The Security is uſurious and againſt Conſcience; and decreed a Redemption, on Payment of the 200l. with ſimple Intereſt at ſix Pounds per Cent. James verſus Oades, 2 Vern. 402.

What Security on Lives to pay a large Sum is not uſurious.

One, intitled to an Eſtate after the Death of two old Lives, takes 350l. to pay 700l. when the Lives die, and the Eſtate fails, and mortgages the Eſtate by Way of Security: No Relief was had againſt this Bargain, tho' both the Lives died in two Years. And the Lord Keeper ſaid, ſuppoſe theſe Lives had lived never ſo long, could the other Party have Relief in Equity? No, there is no Precedent for it. 1 Vern. Rep. 141, 142.

Note; Theſe hazardous Bargains are not always ſet aſide in a Court of Equity, for they may be fair; and it is only upon the Circumſtances of Fraud, or being

being extremely unreaſonable, that they can be overthrown: But Bargains of this Kind will be aſſiſted in Equity, though there are not ſufficient Grounds to ſet them quite aſide. Vide 1 Vern. 271. 2 Chan. Ca. 136, 137. 2 Vern. 15. And note, that regularly the Party who comes to be relieved muſt reſtore the Money paid, &c. according to that Maxim in Equity, He who would have Equity muſt do Equity. But for this vide, where Relief has been given againſt unreaſonable Bonds obtained from young Heirs, Eq. Abr. Tit. Bonds and Obligations.

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# Perpetuities.

Perpetuity defined a Settlement not to be barred.

A Perpetuity, which is the Settlement of an Eſtate in Tail, with Remainders expectant, as are not to be barred or docked by Recovery or Aſſignment, though all that have Intereſt join to paſs the Eſtate, is a Thing odious in Law, and deſtructive to the Common Wealth; for it would put a Stop to Commerce, and prevent the Circulation of the Riches of the Kingdom, and therefore is not to be countenanced in Equity. 1 Chan. Ca. 213. 1 Vern. 164. See 2 Williams 620.

Odious in Law, and deſtructive to the Common Wealth; Decree againſt it in Duke of *Norfolk*'s Caſe.

In the great Caſe of the Duke of Norfolk, it being inſiſted upon, that there was a Difference in Equity between the Limitation of the Truſt of a Term and a Deviſe by Limitation of a Term it ſelf; the Lord Keeper declared, that the Truſt of a Term was to be governed by the ſame Rules as the Limitation or Deviſe of a Term at Law was: And if in Equity we ſhould come nearer to a Perpetuity than the Rules of Common Law will admit, all Men, being deſirous to continue their Eſtates in their Families, would ſettle their Eſtates by Way of Truſt; which might make well for the Juriſdiction of the Court, but would be of great Miſchief to the Common Wealth. That this Caſe being the Limitation of the Truſt of a Term to all the ſeveral Sons in Tail one after another, it was not good, though a hard Caſe; for the Rules of Law muſt be obſerved; and ordered a former Decree made by the Lord Chancellor Nottingham to be reverſed. 1 Vern. Rep. 164.

The Decree reverſed; here Term to wait upon the Inheritance no Intail.

But this Decree was reverſed in the Houſe of Lords, and the Decree of the Lord Nottingham affirmed. At and before the making of which it was ſaid, That the Truſt of a Term for Years, ſeparate from the Inheritance, cannot be intailed in Poſſeſſion or Remainder: But where there is a Term for Years in Being, if the Inheritance of the Land be intailed with Remainders over, there the Term may be limited to wait upon the Inheritance, according to the ſeveral Intails; and ſuch Limitation is good, ſo long as nothing intervenes to interrupt it; but it is not properly an Intail within the Statute de Donis, but governable in Equity, &c. And the Intention of the Deed of Truſt is to preſerve the Term for the younger Children. 3 Chan. Ca. 1, 3, 5, 7, 13.

Leaſes not limitable in Tail; but the Law allows contingent Eſtates to fall in ſhort Time.

If a Leaſe for Years come to be limited in Tail, the Law allows not a preſent Remainder to be limited thereupon; yet it will allow a future Eſtate ariſing upon a Contingency only, and that to wear out in a ſhort Time. Lord Chanceller: A Term was limited to the Husband for ſixty Years, if he lived ſo long, to the Wife for the like Term, and if J. be living at the Time of the Death of the Father and Mother, then to J. but if he die without Iſſue, living Father or Mother, then to E. Now ſuppoſe theſe Words (living Father or Mother) had been left out, then it had been a Limitation and Remainder after an expreſs Intail; but it was adjudged good, becauſe it was a Remainder upon a Contingency, that was to happen during two Lives, which was but a ſhort Contingency, and the Law might very well expect the happening of it: And that is near this Caſe; but here it is only during one Life, there were two. Ibid. 49, 51.

Former Caſes the ſame with this adjudged.

The preſent Caſe is this: The Truſt of a Term for two hundred Years is limited to Henry in Tail, provided if Thomas die without Iſſue in the Life of H. ſo that the Earldom deſcend upon H. then to go to Charles in Tail; and whether this be a good Limitation to C. is the main Queſtion; for moſt certainly it is a void Limitation to the other Brothers in Tail.

The Caſe of Cotton and Heath in Rolls comes up to this: A Term is deviſed to A. for eighteen Years, the Remainder to B. for Life, Remainder to the firſt Iſſue Male of B. which is a contingent Eſtate upon a Con-

Decree for the Plaintiff.

tingency; and yet held good, as the happening of the Contingency was to be in ſo ſhort a Time. And per Lord Chancellor, if here is a Conveyance made which introduceth no viſible Inconvenience, and ſavours not of a Perpetuity, I ſee no Reaſon why it ſhould be void only becauſe it is a Leaſe for Years: I decree for the Plaintiff Charles Howard, that he ſhall hold for the Reſidue of the Term of two hundred Years, &c. Ibid. 30, 51, 52.

Limitations to firſt and other Sons, Perſons not in Being, void; but when are good.

A Leaſe for Years is limited in Tail, with Remainders over; or a Settlement made of a Leaſe, in Truſt for the firſt, ſecond and other Sons for Life, and after to Daughters, &c. (not in eſſe) is void. 1 Chan. Rep. 178, 231. It hath been agreed, that the Limitation of a Term to ſeveral Perſons in Remainder one after another, if thoſe Perſons are in Being, and particularly named, doth not tend to the Intail of a Chattel or Creation of a Perpetuity: But the Truſt of a Term cannot be good beyond two Limitations, to a third Perſon not in Being. A Limitation to Husband and Wife, and the longeſt Liver of them, for Life, and after to the eldeſt Iſſue of them not then born, was decreed good; the Limitation to Husband and Wife being accounted but one Limitation. Sackville v. Dobſon, 1 Chan. Ca. 8, 33.

How far a Term for Years may be ſettled on Children.

Where a Termor granted the Eſtate in Truſt for himſelf for Life, and after for his Wife for Life, after to their Child or Children for their Lives, and after to J.S. The Lord Keeper declared, That the Limitation to J.S. was good: (a) He ſaid, that the Chancery decreed theſe Limitations good, though if they are in ſuch Manner as to make a Perpetuity, that may neither be in Law or Equity. Chalfont and Okes, Ibid. 239.

(a) But if it had been limited to the Heirs of their Bodies, then it had not been good after to any other. See the common Courſe of ſettling Terms for Years, 2 *Williams* 622.

Limitation of a Term good to Sons, &c. the Contingency being to happen in twenty-one Years.

Settlement of a Term on Marriage in Truſt for the Husband and Wife for their Lives, Remainder to the firſt Son until he attains the Age of twenty-one, and after he comes to twenty-one, then to ſuch firſt Son for the Remainder of the Term; and if the firſt Son die before the Age of twenty-one, then to the ſecond, and every other Son in the ſame Manner; and if there be no ſuch Sons, or if all the Sons die before twenty-one, then to W. M. this was adjudged a good Limitation. 2 Vern. Rep. 234, 304.

Where the Remainder of a Truſt-Term good.

A. demiſed the Premiſſes (being a Term for 999 Years) to B. in Truſt for herſelf for Life, then to C. her Son and his Wife for their Lives, Remainder to firſt, &c. Son of C. begotten on his Wife in Tail; and for Default of Iſſue Male, then in Truſt for all the Daughters; there never having been a Son, but a Daughter, it was adjudged, the Remainder of the Truſt of the Term to the Daughter was good. 1 Williams 98. Salk. 156. 2 Vern. 600.

Limitation of a Term good, where the Contingency happens within a Life.

If a Term is deviſed to A. and the Heirs of his Body, and if A. die without Iſſue, living B. then to B. this is a good Limitation, the Contingency ariſing within the Compaſs of a Life. 1 Salk. 225.

Remainder of a Leaſehold where good.

A. deviſes to his Son a Leaſehold Eſtate, to his Executors, Adminiſtrators and Aſſigns for ever; but if he died before twenty-one without Iſſue, then over to his Brother; the Court decreed the Remainder over good. 2 Vern. 151.

Remainder over where good by Way of executory Deviſe, the Contingency being to happen within a Life.

A. deviſes a Term to B. for Life, then to C. for Life, then to D. and his Children, and if it ſhall happen the ſaid D. to die before the Expiration of the Term, not having Iſſue of his Body then living, then to go over to the Plaintiffs for the Reſidue of the Term: It was held, that the Remainder over to the Plaintiffs was good by Way of executory Deviſe, the Limitation over being upon this Contingency, if D. die without Iſſue then living, (viz.) at the Time of his Death, which is good, becauſe the Contingency muſt happen within one Life or not at all; for upon his Death it will be certainly known, whether he leaves Iſſue or not; and this differs in nothing from the Duke of Norfolk's Caſe. Eq. Abr. 193.

A. deviſes a Term of thirty-one Years to H. his Son during his Minority, and if he attains to his Age of twenty-one Years, then to him for Life, if the Term ſhall ſo long continue, and no longer, then to ſuch of his Iſſue to whom he ſhall deviſe it; but if he die without Iſſue, then over to G. his other Son for the Reſidue of the Term. H. died without Iſſue, or without making any Diſpoſition of the Reſidue of the Term, and the Remainder over was decreed to be good by Way of executory Deviſe; the moſt natural Conſtruction of the Words die without Iſſue being if H. die without Iſſue living at his Death. Eq. Ab. 193, 194. 1 Williams 432. Lucas 402.

Where the Limitation over of a Term is good.

One poſſeſſed of a Term deviſes it to A. and B. and if either of them die, and leave no Iſſue of their reſpective Bodies, then to C. the Court held this a good

Limitation to C. if A. or B. left no Iſſue at their Death. 1 Williams 664.

A. deviſes a Term to B. for Life, Remainder to his firſt, &c. Son in Tail ſucceſſively, Remainder to his Daughter; and if B. ſhall have neither Son nor Daughter, then to J. S. B. dies, having never had a Son or Daughter; and it was held the Remainder over to J. S. was good. 2 Williams 618.

What ſhall be a Perpetuity.

If a Man deviſes Land in Fee to A. and if he dies without Heirs, then M. ſhall have it; the ſecond Deviſe is void, for a Fee cannot depend on a Fee; for no Man can ſay when the Heirs of A. will fail; and to allow the Remainder to M. good, upon ſuch a diſtant Contingency, is to perpetuate the Eſtate in the Family of A. and yet preſerve a Remainder or Intereſt in M. which very poſſibly may never veſt; and as theſe Eſtates are unalienable, though all Men joined in the Sale; therefore the Reaſon and Policy of the Law will not ſuffer them to have a longer Duration than a Life or Lives in eſſe, and wearing out together, or the Term of twenty or thirty Years. Eq. Abr. 207. But for this ſee before, and Lucas 422.

A Deviſe of Lands to a Corporation, upon Truſt to convey to A. for Life, and ſo to his firſt Son for Life, and afterwards to the firſt Son of that firſt Son for Life; and in Default of ſuch Iſſue of A. to J. S. for Life, and to his Iſſue Male for Life, &c. and ſo to a great Number of them for Life, and ſo to convey toties quoties; the Court held this to be a Perpetuity. 2 Vern. 737. 1 Williams 332. But ſee how the Court directed the Conveyance to be made, ibid.

Heirs of Body Words of Purchaſe, in ſettling Terms, and not Limitation.

In what Caſes of Terms for Years ſettled on Truſtees in Truſt firſt for Life, and after to Heirs of the Body of the Wife, &c. The Limitation of the Terms to the Heirs of the Body has been adjudged to be Words of Deſcription, and not of Limitation, and good to ſuch Heirs to take by Way of Purchaſe. See Peacock's Caſe, 2 Vern. 195, 196. and 362, 363.

But afterwards a Decree at the Rolls, grounded upon the Caſe of Peacock, was reverſed, and decreed the Limitation to the Heir Male void, and the whole veſted in the Father, to whom the Term was firſt limited for Life, Remainder to the Heirs of his Body. 2 Vern. 668. 1 Williams 132.

# Recoveries.

## *See* Eſtates, Fines, Truſts.

A Recovery hath the ſame Effect in Equity as Law, to bar Remainders.

A Common Recovery, ſuffered by Ceſtui que Truſt of an Eſtate-Tail, has the ſame Effect in Equity to bar the Intail and Remainders, as it would have at Law, in Caſe he had the legal Eſtate in him. 1 Vern. Rep. 440. 2 Vern. 132. 2 Chan. Ca. 71. 2 Vent. 350. 1 Vern. 13. 1 Williams 91.

Where there muſt be a good Tenant to the *Præcipe*.

If A. be Ceſtui que Truſt for Life, Remainder in Truſt for B. in Tail, Remainder in Fee to C. B. cannot by ſuffering a Recovery bar the Remainder, if there be a good Tenant to the Præcipe. 2 Chan. Ca. 64. But if there be no legal Tenant to the Præcipe in order to the ſuffering a Recovery, yet after a Length of Time it ſhall be preſumed that there was. Mod. Ca. in Law and Eq. 143. And though there is no Tenant to the Præcipe, yet a Recovery is good by Way of Eſtoppel againſt the Party that ſuffered it, but not againſt Remainder-Men, Strangers, &c. Lucas 45.

Recovery good by Way of Eſtoppel.

Defective Recovery, and when ſuffered to a particular Purpoſe, Uſes of, &c.

It hath been reſolv'd, that a common Recovery, tho' defective as to a Tenant to the Præcipe, will bar an equitable Eſtate-Tail in Truſt only. 2 Vern. 132. 2 Ch. 63. If Tenant in Tail make a Mortgage, or confeſs a Judgment, &c. and after ſuffer a common Recovery, the Recovery ſhall enure to make good all his precedent Acts and Incumbrances. 1 Chan. Ca. 120. And the Chancery hath decreed to what Uſes a common Recovery of Lands ſhould operate; it being uncertain by the Deeds and Conveyances. 1 Chan. Rep. 98.

Where Remainder-Man ſhall have the Benefit of the Chance of Tenant in Tail's dying before his having ſuffered a Recovery.

Where a Purchaſe is directed to be made, and the Land to be ſettled on A. in Tail, the Remainder over; it is moſt reaſonable for Equity to decree the Truſt to be executed, and the Eſtate ſettled with Remainder over; that ſo ſuch Remainder-Man may have the Benefit of the Chance of Tenant in Tail's dying before his having ſuffered a Recovery. 1 Williams 91.

So where a Sum of Money is directed to be laid out in a Purchaſe of Land, and to be ſettled on A. for Life, Remainder to B. in Tail, Remainder to C. in Fee; if A. and B. bring a Bill for the Money, they ſhall not have it, becauſe of the Contingency to C. which cannot be barred without a Common Recovery. Secus where ſuch Remainder can be barred by Fine only. 1 Williams 470.

Tenant in Tail covenants not to ſuffer a Recovery, and yet does.

Upon a Settlement A. is made Tenant for Life, Remainder to the Heirs of his Body by his Wife; and in the ſame Deed A. covenants not to ſuffer a common Recovery, but that the Lands ſhall be injoyed according to theſe Limitations. A. does ſuffer a Recovery, and then deviſes theſe Lands; the Recovery was held good to bind the Aſſets; but A. being Tenant in Tail, and as ſuch having a Power to ſuffer a Recovery, the Lands deviſed ſhall not be affected. 1 Williams 104. 2 Vern. 635.

Where a Recovery ſuffered ſhall bar the contingent Eſtates limited over.

One ſeiſed in Fee of the Manors of A. and B. deviſed them to C. for Life, and if C. ſhall have Iſſue Male, then to ſuch Iſſue Male and his Heirs for ever; but if C. ſhall have no Iſſue Male, the Manor of A. to J.S. in Fee, and that of B. to J.N. in Fee; C. ſuffers a Recovery of theſe Manors; and it was held, that this barred the contingent Eſtates limited to J.S. and J.N. 1 Williams 509.

Equity will (if it is for the Beneſit of the Family) decree an Infant Truſtee to join in a Recovery.

In a Marriage Settlement the Husband was made Tenant for ninety-nine Years, if he ſo long lived, Remainder to Truſtees during the Life of the Husband, &c. Remainder to the firſt and other Sons by the Marriage in Tail Male, Remainder to the firſt and other Sons by any other Wife, Remainder over; a Son is born and of Age; the Wife is dead, and there is no other Sons by a ſubſequent Marriage; the Truſt for preſerving contingent Remainders deſcends to an Infant: A Court of Equity will, if it is for the Beneſit of the Family, decree the Infant Truſtee to join in a Recovery.

What Method *Ceſtui que Truſt* muſt take to ſuffer a Recovery, and where Truſtees are not compellable to join.

Where a Ceſtui que Truſt in Tail brings a Bill againſt the Truſtees to the Intent they ſhould join in a Recovery; this is not proper; but it is proper to pray, that the Truſtees may convey the Premiſſes to Ceſtui que Truſt in Tail, who may then ſuffer a Recovery; tho' if the Truſtees are alſo Truſtees for any Annuity ſubſiſting, they are not compellable to part with the legal Eſtate out of them to the Ceſtui que Truſt in Tail. 2 Williams 134.

Where a Recovery ſhall be a Bar for want of an Entry for the Forfeiture.

Where Lands were deviſed to A. for Life, and if A. ſhould die leaving Iſſue Male, then to ſuch Iſſue Male and his Heirs for ever, but if A. ſhould leave no Iſſue Male, then to B. in Fee; and A. ſuffered a common Recovery of theſe Lands, and five Years paſſed: It was held, that the right Heirs of the Teſtator were barred; in regard they ought to have entered upon ſuch Forfeiture, and had no new Title of Entry upon the Death of the Tenant for Life. 1 Williams 520.

Where a Forfeiture, yet decreed.

On a Recovery had it was objected, that the Recovery was a wilful Forfeiture in Point of Law, and was voluntary, and upon no Conſideration; and that it ought not to be ſupplied or maintained in Equity; but the Court decreed it. Goodrick v. Brown, 1 Chan. Ca. 49.

Who may be vouch'd.

A Child in Ventre ſa mere it is ſaid may be vouched in a common Recovery; a Bill may be brought in its Behalf, and an Injunction to ſtay Waſte, &c. 2 Vern. Rep. 711.

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## Releaſes.

Releaſe ſet aſide by Accident relating to the original Equity.

IN the Caſe of Bawtrey, a Releaſe was ſet aſide by a ſubſequent Accident, having Relation to the original Equity: The Husband ſeiſed of a Term for Years in Church-Land, purchaſes the Fee of the Truſtees for Sale of Church-Lands in the Time of Oliver Cromwell, and then ſettles the ſame on his Wife for a Jointure, and dies; the Wife releaſed to the Executors all her Right to the perſonal Eſtate, and afterwards the Fee was evicted, on the Reſtoration of King Charles II. And notwithſtanding that and the Releaſe, the Wife was decreed to hold for ſo many Years of the Term as ſhe lived, ſhe being in Poſſeſſion, &c. 1 Chan. Ca. 47.

Miſapprehenſion and wrong Information, Fear, &c. will avoid a Releaſe.

A Man poſſeſſed of a Leaſe for three Lives of a Rectory in Kent, deviſed the Rectory by Will, but that being void, it came to his three Daughters, as Coheirs and ſpecial Occupants: And there being a Suit touching this Rectory in Chancery, the Husband of one of the Daughters fearing to be in Law, and being made to believe that he ſhould be obliged to pay large Coſts; on this Suggeſtion he releaſed the Arrears that ſhould be coming to him for his Share of the Profits of the Rectory (his Share amounting to 1000 l.) to the other Siſters, who were to bear the Charge of the Suit: This Releaſe was ſet aſide and declared void; and it was held, that a Miſapprehenſion in the Party ſhall avoid his Releaſe. 1 Vern. Rep. 32. If a Child releaſe to his Father his orphanage Part which he is intitled to by Virtue of the Cuſtom of the City of London; and this Releaſe is obtained by Threats or unduly, it ſhall be ſet aſide in Equity. 1 Williams 639.

General Rule for avoiding Releaſes.

It is the conſtant Rule in Equity, that where there is either Suppreſſio veri, or Suggeſtio falſi, the Releaſe ſhall be avoided. 1 Vern. Rep. 20. 1 Williams 240.

Releaſe, how to be conſtrued.

A. had a Judgment of 6000 l. againſt B. B. gave A. a Legacy of 5 l. and died; A. on Receipt of this 5 l. gave the Executor of B. a Releaſe in this Manner, I acknowledge to have received of C. 5 l. left me as a Legacy by B. and do releaſe to him all Demands which I againſt him, as Executor of B. can have for any Matter whatſoever; and it was adjudged, that the Generality of the Words all Demands ſhould be reſtrained by the particular Occaſion mentioned in the former Part thereof, (viz.) the Receipt of the 5 l. Legacy, and ſhould not be a Diſcharge of the Judgment. 1 Lev. 101.

Either *Suppreſſio veri*, or *Suggeſtio falſi*, is a good Ground to ſet aſide a Releaſe.

One deviſes Lands to J. S. and his Heirs, but the Will was defectively executed, and afterwards the Heir at Law, in Conſideration of 100 Guineas paid him by J. S. the Deviſee, does by Deed, reciting that this Will was duly executed, releaſe to the Deviſee all his Right to the Eſtate deviſed; and after that, there being Debts appointed by the Will to be paid, the Deviſee tells the Heir, that it would facilitate the Raiſing of the Money for the Payment of the Debts, if he (the Heir) would join in a Leaſe and Releaſe of the deviſed Premiſſes; and thereupon, for 50 Guineas more paid to the Heir, he, together with the Deviſee, by Leaſe and Releaſe conveyed the Premiſſes to J. N. and his Heirs, in Conſideration of 4000 l. mentioned to be paid by J. N. and a Receipt was given; but in Truth this Purchaſe-Money was not paid, but J. N. was only a Truſtee for J. S. The Court ſet aſide this Leaſe and Releaſe, upon Payment of the 150 Guineas and Intereſt; and ſaid, either Suppreſſio veri, or Suggeſtio falſi, is a good Reaſon to ſet aſide any Releaſe or Conveyance; and that to recite in a Deed (as in this Caſe) that the Will was duly executed, when it was not, is Suggeſtio falſi, and to conceal from the Heir, (as here) that the Will was not duly executed, is Suppreſſio veri. 1 Williams 239, 240, 727.

Where a Will ſhall or ſhall not operate as a Releaſe.

Tho' a Will cannot enure as a Releaſe, even ſuppoſing it be ſealed and delivered, for want of its taking Effect in the Teſtator's Life-time, yet provided it were expreſſed to be the Intention of the Party, that the Debt ſhould be diſcharged, the Will would operate accordingly. 1 Williams 85. Vide 2 Williams 332. where A. deviſed to B. the Debt which B. owed him, and it was ſaid, this could not operate in Strictneſs as a Releaſe.

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# Remainders.

## *See* Perpetuities.

Remainder after a Fee-ſimple may be by Uſe, or Deviſe.

IT is a Rule in Law, that there can be no Remainders limited after a Fee-ſimple; except it be by Uſe, or by way of Deviſe: A Deviſe is to a Man and his Heirs, and if he die without Iſſue in the Life of B. then to B. and his Heirs; this is a Fee-ſimple upon a Fee-ſimple, and held good. 3 Chan. Ca. 31.

Contingencies not happening, where Remainders over are good of a Term.

Where the Truſt of a Term is to one for Life, Remainder for Life, Remainder to a third Perſon for the whole Term, (if he out-lives the Tenants for Life) Remainder to another and the Heirs of his Body; the Remainder to the third Perſon, being merely contingent, is not ſo veſted in him, as that his Executors ſhall have it, he dying before the Tenants for Life; and in this Caſe, the Contingency not happening, the Remainder over was well limited, after ſuch a contingent Remainder. Wood *v.* Saund, 1 Chan. Ca. 132.

Settlement of perſonal Chattels in a Family, with Remainders, &c. adjudged good in Equity.

A. by Will deviſes all his Books, Pictures, Medals, and perſonal Chattels to B. his Wife, during her Life; and if ſhe have a Son, after her Deceaſe to ſuch Son; but if there be no Son, or if he die, then to T. V.

to have the Uſe only during his Life; and that he ſhall leave them to W. his Son; and that he diſpoſe of them to him who ſhall next ſucceed in the Teſtator's Eſtate in the County of, &c. as an Heir-Loom, and to go and remain to ſuch Perſon and Perſons as ſhall inherit the ſaid Eſtate. The Lord Keeper declared, that the Uſe of the aforeſaid perſonal Chattels was well ſettled by the Will; and the Limitation in Remainder to W. his Father dying in the Life-time of the Teſtator, and B. being not with Child of a Son, ſo as the Contingencies upon which the Limitation was made never happening, the Deviſe to the ſaid W. was an abſolute Deviſe, and good in Law.

To deſcend as an Heir-Loom, and Inventory to be made.

And it was decreed, that the Defendant B. ſhould have the Uſe of the ſaid perſonal Chattels during her Life only; and W. to have the ſame after her Death, according to the Will; and that an Inventory ſhould be made of the ſaid Chattels, and the ſaid B. be examined upon Interrogatories for the Diſcovery of the Particulars thereof. Vachel's Caſe, 1 Chan. Ca. 129, 130.

Where a Remainder over of Goods was held good.

A. deviſes Houſhold Goods to his Wife for Life, and after her Death Remainder over to his Son; the Court allowed this to be a good Deviſe over, and the ſame as if the Deviſe had been only of the Uſe of the Goods to the Wife for Life. 1 Williams 1. 2 Vern. 331. Eq. Abr. 361.

So of other perſonal Eſtate.

One deviſes his perſonal Eſtate to his Son, and if his Son die within Age, and without Iſſue, then the perſonal Eſtate to go to the Teſtator's Brother; the Son ſhall have the Produce of the perſonal Eſtate, and only the Capital, in Caſe of the Infant's Death, &c. ſhall go to the Brother. 1 Williams 500, 651.

A Deviſe of 400 l. to A. for Life, then to his firſt Son payable at twenty-one, but if A. die without Iſſue, then to B. this is good, and muſt be intended if A. die without Iſſue living at his Death. 1 Williams 748.

J. S. deviſes the Reſidue of his perſonal Eſtate to A. for Life, and afterwards for her Children, the yearly Intereſt and Produce to be for their Maintenance until the Sons ſhould be twenty-one, and the Daughters eighteen, at which reſpective Ages their reſpective Portions were to be paid them; and for want of ſuch Iſſue, then to B. A. dies without Iſſue: It was held, that a Deviſe over of a Leaſe for Years, or other perſonal Eſtate, after a Death without Iſſue, or in Failure of Iſſue, would have been void; but here the

Words for want of ſuch Iſſue muſt be intended for want of ſuch Children. 2 Williams 411.

A Farmer deviſed his Stock (which conſiſted of Corn, Hay, Cattle, &c.) to his Wife for Life, and after her Death to the Plaintiff: The Maſter of the Rolls held the Deviſe over good; but ſaid, if any of the Cattle were worn out in uſing, the Defendant was not to be anſwerable for them; and if any were ſold as uſeleſs, the Defendant was only to anſwer the Value of them at the Time of the Sale; and an Account was decreed to be taken accordingly. Eq. Abr. 361.

The Diſtinction between the Deviſe of a perſonal Thing to one for Life, Remainder over, and the Uſe thereof deviſed in that Manner, ſeems now exploded in Conformity to the Civil Law; and likewiſe as the Teſtator's Intention appears the ſame in both Caſes. 37 H. 6. 1 Bro. 254, 57. 13 Co. 5, 16. Owen 33. 2 Vern. 245. See 331. Eq. Abr. 361. and 1 Williams 1. ſupra.

Where a Remainder over of perſonal Chattels is void;

But if Money, Goods, or other perſonal Chattels are deviſed to one and the Heirs of his Body, or to one, and if he dies without Heirs of his Body, Remainder over; the Remainder is totally void, and the abſolute Property veſts in the firſt Deviſee, and ſhall go to his Executors or Adminiſtrators. Eq. Abr. 362.

And where good.

And yet where a Deviſe was of Money and Goods to A. for Life, and if he die without Iſſue, Remainder over; this was held a good Deviſe over: for the firſt Limitation being expreſly for Life, the Words after could not inlarge it by Implication, as they could a real Eſtate; and then it falls within the common Rule, where the Limitation is held good, the Contingency being to happen within the Compaſs of a Life or Lives in eſſe. 1 Chan. Rep. 411.

A. being poſſeſſed of an Annuity of 14 l. per Annum for 99 Years out of the Exchequer, on his Marriage covenants with B. and C. to pay this 14 l. per Annum to his Wife for her ſeparate Uſe, and after the Death of either of them, then to the Survivor for Life, and after the Death of both, then to the Child or Children to be begotten between them; and in Default of ſuch Child or Children, then to his own Executors and Adminiſtrators for the Reſidue of the Term. A. and his Wife had Iſſue only one Son, who lived to the Age of five Years, and then died; and after the Death of A. and his Wife, the Plaintiff took out Adminiſtration to the Son, and brought his Bill againſt the Executors of A. for this Annuity. My Lord Chancellor ſaid, this being by way of Covenant, no more paſſed out of A. than to ſerve the Uſes expreſſed; and it was not a Diſpoſition of the Annuity itſelf, but only a Covenant to pay the 14 l. per Ann. in ſuch Manner; and ſince it was never deveſted out of A. he would not on this Bill, on any Pretence of Equity, tear it out of him or his Executors; and ſo diſmiſſed the Bill; tho' he did not at all diſpute the Caſe, if it had been of a Term, or the Truſt of a Term, ſettled in ſuch Manner, that the Remainder would not have been good; but here there was only a Covenant to pay the 14 l. and not the Annuity itſelf; which was thought at the Bar to be an over nice Diſtinction. Eq. Abr. 363.

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# Rents.

Iſſue in Tail not liable for Arrears of a Rent-charge, incurred in Time of an Anceſtor.

A Perſon is Tenant in Tail, ſubject to a Rent-charge granted to another for Life; he dies, the Rent-charge being in Arrear: The Iſſue in Tail are not liable by the Statute of 32 H. 8. to pay the Rent incurred in the Life of his Anceſtor: And the Lord Chancellor ſaid, had this Caſe been within the Statute, the Plaintiff's Remedy was at Law, and not to be aided in Equity, or the Remedy altered or changed. 2 Vern. Rep. 613.

Rent decreed to be paid in Equity, where no Remedy at Law.

The Bill was for Rent in Arrear for ſome Years paſt; and the Plaintiff ſuggeſted, that the Deeds by which the Rent was created were loſt, &c. but there was Proof of the Payment of the Rent till ſuch a Time: (a) The Maſter of the Rolls decreed the Defendant to pay the Arrears and growing Rent; becauſe it was uncertain what Kind of Rent it was, and ſo no Remedy at Law. Collet and Jacques, 1 Chan. Ca. 120.

(a) A Caſe of like Nature, where the Rent in Arrear and the future Rent was decreed. See *Finch's Rep.* 256.

And where Remedy at Law not ſufficient; but Q.

Remedy was given in Equity for a Rent, where the Remedy at Law was not ſufficient, for want of a Diſtreſs, &c. and in caſe of a Rent-ſeck, where the Grantee had no Seiſin, the Chancery hath frequently given

Relief by Decree; but in that Caſe it was inſiſted, that there was no Remedy at all by Law: And tho' Equity will grant a Remedy where there is none at Law, yet it will not where there is one at Law, if it be not effectual. 1 Chan. Ca. 79, 80. Vide Max. Eq. 25.

If any Fraud is uſed to hinder Diſtreſs, Relief may be had in Chancery.

The Plaintiff's Bill did ſuggeſt, that the Defendant kept not any Stock upon the Ground, ſo that the Plaintiff had not a ſufficient Diſtreſs, and was without Remedy for a Rent-charge of 200 l. per Annum, of which there was Half a Year due; and prayed a Decree againſt the Defendant for the Arrears and growing Payments: Per Lord Keeper: Unleſs there appear to be Fraud no Relief can be here; all I can do is to refer it to a Trial at Law, whether there was any Fraud uſed to hinder the Plaintiff of his Diſtreſs: And accordingly, at the Plaintiff's Deſire, did refer it. Davy's Caſe, 1 Chan. Ca. 144, 146.

The Perſon of an Heir, &c. not to be charged for Rent where the Land only liable.

A Rent which charged only the Land, by Diſtreſs, is not to be decreed in Equity againſt the Perſon of the Heir, &c. and in the above Caſe of Davy againſt Davy, the Defendant demurred, for that the Lands only being charged with the Rent at Law, there was no Equity to charge the Defendant's Perſon: But this Demurrer was over-ruled, it being laid in the Bill, that there was a legal Defect in the Aſſurance, which ought to be made good in Equity, the Grant being on a good Conſideration. Ibid. 144. and ſee 184.

Who ſhall be intitled to the Rent, whether the Executor, or Jointreſs of the Leſſor.

A. upon his Marriage ſettles an Eſtate on his Wife for her Jointure, with a Power for himſelf to make Leaſes at the uſual Rent; A. purſuant to the Power, made Leaſes of ſeveral Parts of the Land compriſed in this Settlement, reſerving the Rent at Lady-day and Michaelmas, and died upon Michaelmas-day between three and four in the Afternoon, and before Sun-ſet: The Queſtion was, whether the Executor or the Heir, or, which is the ſame, the Jointreſs of the Leſſor, was intitled to the Rent; and it was decreed by the Maſter of the Rolls, that the Rent ſhould go to the Jointreſs, who then had the Reverſion, and not to the Executor. 1 Williams 177. Salk. 578. But one of the Leſſees, to whom the Leaſes were made, having paid his Rent (being 18 l.) to the Leſſor in the Morning of the ſaid Michaelmas-day, this was held a good Payment as to the Leſſee; but the Court decreed the Executors of A. the Leſſor to account for and pay the ſame to the Jointreſs. 1 Williams 180. Note; As to this laſt Point the Reporter adds a Quære; for if the 18 l. Rent was a good Payment at Law, (as certainly it was, according to Clun's Caſe, 10 Co. 127. b.) why muſt it not be ſo in Equity? and refers to the Caſe of Lord Strafford verſus Lady Wentworth, Preced. in Chan. 555. Mod. Ca. in Law and Eq. 21. S. C.

Where the Executor, and not the Heir, is intitled to the Rent.

Tenant for three Lives, to him and his Heirs, aſſigns to J. S. and his Heirs, reſerving a Rent to the Aſſignor, his Executors, &c. the Aſſignor dies; his Executors, and not his Heir, are intitled to the Rent. 1 Williams 555.

For Fee-Farm Rents a Diſtreſs may be taken on all the Lands of the Tenant, unleſs aliened.

To incourage Purchaſers of Fee-Farm Rents, the Stat. 22 Car. 2. gives them the like Liberty and Power to diſtrain, not only on the Land out of which the Rent iſſues, but upon any other of the Lands * of the Tenant, who ought to pay it, as the King had: But altho' the King may take a Diſtreſs on any other Lands of his Tenant, as well as on thoſe out of which the Rent is granted; yet if the Tenant alien, deviſe, or leaſe at Will only his other Land, the Crown cannot diſtrain on thoſe Lands. 2 Vern. 714, 715. 1 Williams 307.

In what Caſe there ſhall be a Deduction of the Land-Tax out of the Quit-Rent.

A. had a Quit-Rent of 3 l. a Year, as belonging to his Manor of D. and iſſuing out of the Lands of B. who in the Payment thereof inſiſted to deduct two Shillings in the Pound for the Land-Tax of four Shillings in the Pound, and ſummoned A. before the Commiſſioners, to adjuſt the Land-Tax on the Quit-Rent, who accordingly aſcertained it two Shillings in the Pound; after which B. tendered the Quit-Rent, deducting two Shillings in the Pound. Lord Chancellor ſaid, though the Commiſſioners have no Power to ſettle the Proportion of Taxes, as to what the Tenant ſhall deduct for them out of the Quit-Rent, yet they being Gentlemen of the Country, and living upon the Spot, and having Power to tax the Quit-Rent, he would look upon what they had done to be a proper Meaſure of Juſtice, and therefore A. the Plaintiff had not done well not to acquieſce under it; but at the ſame Time declared his Opinion to be, (as had been before reſolved) that a Quit-Rent or Fee-Farm, in Caſe of Payment to the Land-Tax, (ſuppoſe a Tax of four Shillings in the Pound) ought not to have 4 s. in the Pound deducted, unleſs the Land, out of which ſuch Rent or Fee-Farm iſſues, pays 4 s. in the Pound, but is to pay only in Proportion as ſuch Land pays. 1 Williams 328.

Relief againſt a Diſtreſs for Rent of Cattle in an Innkeeper's Grounds, driving to Market.

A Grazier's Cattle driving to London were diſtrained in Grounds belonging to an Inn at Barnet for the Innkeeper's

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* *Quære*, if ſuch Grantee of a Fee-Farm Rent may diſtrain on other Lands of the Tenant under Sequeſtration. 1 *Williams* 307.

Keeper's Rent; and in Replevin the Landlord had Judgment at Law; but the Grazier was relieved in Equity againſt it, for it was proved that the Landlord was privy to the putting the Cattle into the Grounds: So that the Court looked upon this as a Fraud; and ſeemed to think, that the Grounds lying to the Inn, and uſed therewith, ought to have the ſame Privilege as the Inn, and Paſſengers Cattle not to be diſtrainable there. Joyce's Caſe, 2 Vern. Rep. 129.

Where there can be no Apportionment of the Head Landlord's Rent.

A Leſſee for Years under a certain Rent, and Covenant to repair, makes 100 Under-Leaſes; the Premiſſes not being repaired, nor the Rent paid, a Re-entry is made, and the orignal Leaſe avoided: Six of the Under-Leſſees having brought a Bill againſt the Head Landlord, and firſt Leſſee & al', the Court held, that there could be no Decree to apportion the Head Landlord's Rents; nor any Relief for the Plaintiffs, but on their Payment of the whole Rent in Arrear, and repairing all the Premiſſes; but having ſo done, they might compel the reſt of the Under-Tenants to contribute. 2 Vern. 103.

In what Caſe there ſhall be Contribution among Under-tenants.

In Equity Rent apportioned, when not at Law.

Rent may be apportioned in Equity, where it cannot in Law. Vide 3 Ch. Rep. 11. and the Statute 11 Geo. 2. ante, under Title Tenant for Years, by which Rent is apportioned in Point of Time.

# Revocations.

The great Caſe of Revocations of *Bath* and *Montague*.

THE Caſe of the Earls of Bath and Montague was this: In the Year 1675 Chriſtopher Duke of Albemarle made his Will, and gave the Bulk of his Eſtate to the Lord of Bath, as his neareſt Kinſman, with Deſire, that by the King's Favour the Title of Duke of Albemarle might be conferred upon the Earl of Bath, &c. Then in the Year 1681 the Duke of Albemarle made a Deed of Leaſe and Releaſe, reciting the Will, but with ſome Variations, and mentioning, that the Intent of the Deed was to diſpoſe of the Eſtate, according as in the Will, and to confirm and not revoke it; and then the Deed

Firſt a Will was made, afterwards a Settlement, and then a ſecond Will.

diſpoſeth of the Eſtate, ſome to the Greenvils, &c. tho' the main Bulk thereof be ſettled upon the Lord of Bath: But in this Deed there is a Power of Revocation, on Tender of a Shilling, by Writing under Hand and Seal, in the Preſence of ſix Witneſſes, whereof three to be Peers, and then to limit new Uſes. Afterwards, in the Year 1687, the Duke makes another Will, and therein he gives his Eſtate in a different Manner, that is, the Bulk and Main of it to Mr. Monk, whom he ſuppoſes to be his Kinſman, inſtead of my Lord of Bath. The Queſtion was, whether or no this Will in 1687, had revoked the Deed made in 1681, in Equity; for there was no Tender of Money, and but three Witneſſes to this Will, and not one of them a Peer, ſo that in Law it was plain to be no Revocation, becauſe the Power was not purſued. 3 Chan. Ca. 55, 96, 97.

The Deed of Settlement found good and valid at Law.

The Validity of the Deed of Settlement was tried at Law, upon an Ejectment in the Court of King's Bench, by Direction of the Chancery, where the Title was found for the Earl of Bath, by the Strength of this Deed. And altho' it was inſiſted, that the Deed was obtained by Surprize; (but no Fraud was proved in it) that it was a concealed and forgotten Deed; that it was attendant on a Will, and ſo revocable in us own Nature; that there was an implied Truſt in the Deed; that the Publiſhing of the laſt Will did amount to a Revocation in Equity, tho' the Circumſtances of the Power were not purſued, &c. Yet the Lord Chief Juſtice Holt, and Treby and Baron Powel, who aſſiſted the Lord Keeper, were of Opinion, that the laſt Will was no Revocation of the Deed of Settlement; and the Lord Keeper Sommers concurred with the Lords the Judges, that there was not ſufficient Ground for a Court of Equity to interpoſe and ſet aſide the Deed of 81. Therefore he decreed, that the Bills of the Lord Montague and Mr. Monk, &c. ſhould be diſmiſſed. Ibid. 56, 70, 95, 97, 111, 127.

And the laſt Will held no Revocation of the Settlement.

There were no Powers of Revocation at Common Law, but Conditions of Re-entry.

It was declared in this Caſe, That no Conveyance at Common Law could have a Power of Revocation annexed to it, as a Feoffment, &c. becauſe the Law would not admit of ſuch an Abſurdity, that a Man ſhould give an Eſtate abſolutely to another, and yet reſerve a Power to recal it from him at his Pleaſure: But a Man might have annexed a Condition to his Feoffment, that if he tendered 12 d. to the Feoffee or his heirs, he might enter upon the Eſtate, &c. And after the Statute of 27 H. 8. of Uſes, Powers of Revocation firſt came in Uſe, being let in by that Statute as Conditions, and working as ſuch, but reveſting the Eſtate without Re-entry, tho' ſtill there is a Neceſſity of the Powers being performed. Ibid. 66, 67.

Deeds are not revocable without Power reſerved therein, and all Circumſtances muſt be obſerved.

A Deed is not revocable, becauſe it hath an immediate Effect, without a Power reſerved in the Deed it ſelf: In Revocations, at Law all Circumſtances muſt be obſerved, or the Power is not well executed; and there can be no Revocation in Equity that is not good in Law, unleſs the Party's Intention be hindered by Fraud or Accident. For the Law hath been liberal in expounding Powers of Revocation; and where the Law expounds a Thing according to an equitable Conſtruction, Equity ought not to extend it farther: Yet where there is a deliberate Intent to make a new Settlement, and a Man goes as far as he can to make it, Equity may ſupply a Defect; but here the Party had not done all that he could do. Ibid. 86, 99, 108, 126.

'Tis the Nature of a Will to be revoked, but not of a Deed.

If a Man makes a voluntary Settlement to Uſes, and reſerves no Power of Revocation, he cannot revoke this in Equity; and where a Power is reſerved, and not duly purſued, it is the ſame as if he did it without Power. When a Deed is made to confirm a Will, the Eſtate limited thereby doth ariſe by the Deed, and the Will is revoked by the Deed: And tho' 'tis the Nature of a Will to be revocable by the laſt Will; that doth not revoke the Deed too, which certainly ſtands good. Ibid. 86, 99, 107.

A Power of Revocation once executed is at an End, unleſs in the Deed of Revocation there is a Power to revoke the Uſes thereby declared.

A Man makes a Settlement, wherein was a Power, that he might from Time to Time by Deed or Writing under his Hand and Seal revoke the Uſes thereof, and by the ſame or any other Deed limit and declare new Uſes; in Purſuance of this Power he revokes the old Uſe, and by the ſame Deed limits new Uſes, without annexing any new Power of Revocation to thoſe new Uſes: afterwards, thinking he had by Virtue of the firſt Settlement a Power of Revocation totics quoties, he by another Deed revokes the laſt Uſes, and again declares other Uſes of the ſame Lands; and if he had ſuch a Power was the Queſtion. It was agreed he might in the Deed of Revocation have annexed a Power of revoking the Uſes thereby declared, and might afterwards have executed that Power accordingly; but in this Caſe, there being no ſuch new Power of Revocation annexed to the new Uſes, 'twas decreed, that his Power of Revocation by the firſt Deed was executed and at an End, and by Conſequence, that the Revocation afterwards was without any Warrant, and ſo the Uſes limited upon the firſt Revocation muſt ſtand; and this Decree was affirmed in the Houſe of Peers. Eq. Abr. 342.

Of two voluntary Settlements, if the firſt is made without Power of Revocation againſt the Intent of the Party, the ſecond ſhall prevail. 1 Williams 581.

Power in a Settlement to revoke ſuſpends the veſting of the Portions.

Where in a Truſt-Term to raiſe Portions there is a Power for the Husband, with the Conſent of the Truſtees, to revoke the Uſes in the Settlement, this ſuſpends the Veſting of the Portions. 2 Williams 102.

Where a Will ſhall be a good Revocation, tho' no Mention be made of the Power.

If A. has by Leaſe and Releaſe made himſelf Tenant for Life of Lands in D. Remainder to ſeveral Uſes therein mentioned, with a Power by any Writing, &c. to revoke theſe Uſes, and limit new ones, and he afterwards by Will deviſes all his Lands in D. &c. to J. S. having no other Lands in D. excepting theſe; they ſhall paſs, if the Will be circumſtanced as the Power requires, tho' no Mention be made of the Power. 2 Williams 415.

Where there is no Power of new Limitation, by Power to revoke one may do it.

A Son claimed againſt the Father, &c. The Son departed from his voluntary Conveyance, and ſet up a prior Conveyance, with Power of Revocation; but the Deed was without a Power of Limitation to limit new Uſes: The Lord Chancellor declared, that altho' no Power of new Limitation was expreſſed in the Deed, * yet the Law gives the Revoker a Power to do it. 1 Chan. Ca. 46.

* For he that has Power to revoke, has Power to limit. *Ibid.*

A defective Revocation help'd in Equity, but not ſupply'd where there's none.

One makes a voluntary Settlement, with Power of Revocation upon Tender of a Guinea; and afterwards ſettles the ſame Lands to other Uſes, but doth not tender the Money, &c. Per Cur': This Court may ſupply an informal or defective Revocation, but cannot make a Revocation where there is none; prove a Tender of the Guinea, or that the Defendant intended to revoke the former Settlement; one or other of them ſhall be ſufficient, tho' it hath not all the Formalities mentioned in the Power of Revocation, if it appears to be a ſolid Act, and done Animo revocandi. Arundel verſus Philpot, 2 Vern. Rep. *69*, 70.

Revocations by Implication, when allowed by other Deeds, *&c.*

Where a ſubſequent Act ſhall amount to a Revocation by Implication, it muſt be a neceſſary Implication, and wholly inconſiſtent with the former Deed or Will. A Deviſe is in Fee; a Leaſe ſubſequent revokes not the Deviſe: And if a Deviſe be for forty Years, and afterwards the Teſtator grants a Leaſe for twenty Years of the ſame Premiſſes; that is no Revocation, only pro tanto. A Mortgage ſubſequent to a

Deviſe, no Revocation, but pro tanto. Ibid. 496. See 1 Roll. Abr. 616. Eq. Abr. 416.

Revocation in Law, not ſo in Equity.

A. deviſes Lands in Fee to B. and then makes a Mortgage in Fee of the ſame Lands: This is an abſolute Revocation in Law of the Deviſe; contra if it had been a Mortgage for Years: But it is not a total Revocation in Equity. 1 Vern. 329, 330, 342, 97, 141. 1 Salk. 158. 2 Williams 334.

Where a Covenant in a Marriage Settlement is a Revocation of a Deviſe in a Will.

A. deviſed to his Wife ſix Houſes in D. in Bar of Dower, and having two Daughters B. and C. deviſes one Moiety of his real and perſonal Eſtate to B. the other Moiety of his real and perſonal Eſtate to C. Afterwards A. upon the Marriage of his Daughter B. with J. S. covenants to ſettle a Moiety of his real Eſtate to the Uſe of himſelf for Life, Remainder to J. S. the Huſband and B. his intended Wife. It was inſiſted, and ſo held by the Court, that tho' this was but a Covenant, and therefore at Law no Revocation of the Will, by which the Teſtator had diſpoſed of his real Eſtate, yet that the ſame being for a valuable Conſideration, was in Equity tantamount to a Conveyance, and conſequently in Equity a Revocation of the Will as to the Moiety of the ſix Houſes deviſed by the Teſtator to his Wife; ſo that J. S. the Huſband was intitled to one clear Moiety of the real Eſtate, and to an Account of the Rents and Profits from the Death of the Teſtator: But as to the ſix Houſes deviſed to the Teſtator's Wife, it being the Teſtator's Intention that ſhe ſhould have them, the Court held, that ſhe ſhould have a Satisfaction out of the remaining Moiety, and ſhould not ſuffer by the Marriage Articles, there being enough out of the other Moiety to ſatisfy the Deviſe of the ſix Houſes to her. 2 Williams 332, 333.

A Will revoked by a Leaſe and Releaſe ſubſequent.

A. Earl of Lincoln mortgaged the Manor of S. to W. and his Heirs, for 12000 l. and afterwards by Will, in Default of Iſſue Male of his own Body, deviſed it to B. for Life, Remainder to his firſt, &c. Son in Tail, Remainder over, and appointed, that his Houſhold Goods at his chief Houſe at S. ſhould remain there as Heir-looms to the next Heir Male who ſhould be Earl of Lincoln, and made B. Executor; afterwards A. (who was very whimſical) fancying he ſhould marry C. tho' it was proved there never was any Intention of ſuch Marriage, or any Treaty about it, he makes a Leaſe and Releaſe of thoſe Premiſſes to D. and E. and their Heirs, in Conſideration of the intended Marriage, to the Uſe of himſelf and his Heirs, till the intended Marriage took Effect, then as to Part in Truſt for C. and her Heirs in Lieu of Dower, and as to the Reſt, the Truſtees were to ſell it to diſincumber that Part limited to C. and the Surplus of the Money to his Executors and Adminiſtrators. There was no farther Progreſs towards the Marriage; but the Earl died without altering his Will, and the Honour deſcended to B. who ſoon after died; and the Plaintiff an Infant, his eldeſt Son and Heir, brought his Bill for a Redemption of the Mortgage, and a Conveyance of the Eſtate; and the Defendants, the Couſins and Coheirs of A. the Earl, brought a Croſs Bill, that they might redeem, and have a Conveyance of the Eſtate to them; and the only Queſtion was, whether this Leaſe and Releaſe was a Revocation of the Will. It was ſaid for the Defendants, and ſo held by the Court, that ſuch a Leaſe and Releaſe would have been a Revocation of a Deviſe of a legal Eſtate, and that equitable Eſtates are governed by the ſame Rules that legal Eſtates are; and there is no Fraud nor other equitable Circumſtances to make the Court vary from that Rule in this Caſe, and the Will is in Diſheriſon of the Heir, who is always favoured in all Courts; and as to the Caſes, where Mortgages have been held no Revocation in Equity, it was ſaid, that is becauſe Mortgages are not conſidered as Conveyances of the Eſtate, but only Charges upon it; and my Lord Keeper diſmiſſed the Plaintiff's Bill, and decreed the Coheirs to have the Redemption of the Mortgage. Eq. Abr. 411, 412. Show. P. C. 154. S.C. And the Decree affirmed in the Houſe of Lords.

So where J. S. by Will deviſed ſeveral Legacies, and gave the reſt of his real and perſonal Eſtate, after his Debts paid, to A. on Condition he took the Name of J. S. and the Heirs Male of his Body, with Remainders over: Afterwards by Leaſe and Releaſe J. S. together with J. N. his Truſtee, conveyed ſeveral Manors and Lands in W. to Truſtees and their Heirs, to the Uſe of himſelf for Life, without Impeachment of Waſte; and that the Truſtees ſhould execute ſuch Conveyances as J. S. by Writing, &c. ſhould appoint; J. S. dies without altering or revoking his Will, or making any other Appointment touching the real Eſtate; and it was decreed, that this Leaſe and Releaſe was a Revocation of the Will. Eq. Abr. 412.

Settlement of Part of the Lands deviſed no Revocation of the other Part.

A. by Will deviſes Lands, in Truſt to permit his Daughter S. to receive the Rents and Profits until her Marriage or Death; and in Caſe ſhe married with the Conſent of two of the Truſtees and her Mother, then to convey the Premiſſes to her and her Heirs; but if ſhe died before Marriage, or married without ſuch Conſent, then to convey to other Perſons. S. marries in the Life-time of her Father, and with his Conſent, and he ſettled Part of thoſe Lands on her and her Huſband, and died; and it was held, that this Settlement was no Revocation of the Will as to the Deviſe of the other Lands. 2 Vern. 720.

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*The following Caſe of Mr.* Fitz-Gerald *and Lord* Fauconberge, *containing an ample Explication of the Doctrine of Revocations, being a very late one, is here inſerted* at Length *from an original Manuſcript, and not abridged in Form, as are the other Caſes.*

Fitz-Gib. 207. S.C.

## Fitz-Gerald & Ux' *verſus* Lord and Lady *Fauconberge & al'.*

Caſe of *Fitz-Gerald* and Lord *Fauconberge*, heard on the ſixth and eighth of *December* 1729, by *Lord Chancellor*, *Maſter of the Rolls*, and Lord Chief Baron *Reynolds*; the Decree pronounced on the 12th of *June* 1730.

THE Plaintiff's Bill is for an undivided Moiety of the Eſtate of William Fowler, Eſq; &c. in Right of the Plaintiff's Wife, who is Coheireſs with the Defendant, the Lady Fauconberge, to the ſaid Mr. Fowler, and the Caſe was this:

The Caſe ſtated, Deed ſhewing the Power of Revocation.

The ſaid William Fowler, being ſeiſed in Fee of a conſiderable Eſtate, ſettled the ſaid Eſtate by Deeds of Leaſe and Releaſe in the Year 1712, to the Uſes therein after ſpecified: With Liberty nevertheleſs for him the ſaid *W. Fowler* freely and clearly, at his Will and Pleaſure, to diſpoſe of, change or alienate the ſaid Eſtate, or any Part thereof, for any Eſtate or Eſtates whatſoever, as he ſhould think fit; and to revoke all and every the Uſe and Uſes thereby limited: Then the Uſes are declared, viz. to himſelf for Life, with ſeveral other Remainders, and a Remainder to the Defendant the Lady Fauconberge in Tail; the ſaid Deed contains the following Powers. 1. For the ſaid *W. Fowler*, by any Deed or Writing under his Hand and Seal, to be ſigned and duly ſealed and delivered in the

Preſence of two or more Witneſſes, to demiſe, leaſe, limit or appoint the ſaid Premiſſes to any Perſon whatſoever, for any Term or Terms whatſoever, for ſo much yearly Rent as he ſhould think fit. Then follows this Proviſo, That it ſhall and may be lawful to and for the ſaid *W. Fowler*, at any Time during his natural Life, at his Will and Pleaſure, to grant, ſell or demiſe the hereby granted Premiſſes, or any Part thereof, or by any Deed or Writing under his Hand and Seal, or by his laſt Will in Writing, ſigned, ſealed, delivered and publiſhed, in the Preſence of three or more Witneſſes, to revoke, repeal and make void all, every, or any the Uſe and Uſes, Eſtate and Eſtates, Truſts and Limitations before raiſed, and to declare and limit the ſame, or ſuch other new Uſes, as ſhould ſeem moſt meet to him; and then and from thenceforth the Eſtates before limited and ſo revoked to ceaſe and be utterly void; and that the ſaid *W. Fowler* ſhall and may diſpoſe of the ſame Premiſſes, and every Part and Parcel thereof, to ſuch other Perſon and Uſes as he ſhall think fit; any Thing before mentioned to the contrary in any wiſe notwithſtanding. The firſt Part of this Proviſo, viz. to grant, ſell or demiſe, appears inſerted by Interlineation.

Deed of Truſt, &c. made afterwards.

Afterwards the ſaid Mr. Fowler, by Leaſe and Releaſe in the Year 1715, reciting, that he was indebted to ſeveral Perſons in the ſeveral Sums ſpecified in a Schedule to the ſaid Deed of Releaſe annexed, conveyed his ſaid Eſtate to John Tombs and Edward Ward, and their Heirs, for the better and ſpeedier Payment of his ſaid Debts, in Truſt that they ſhould pay the ſaid Debts, either by the annual Profits, or by a Mortgage or Sale of the Premiſſes, And after Payment thereof, that they ſhould pay the Overplus, if any, and reconvey ſuch Part of the Premiſſes as ſhould remain unſold, to the ſaid *W. Fowler*, or to ſuch Perſon and Perſons, and to ſuch Uſe and Uſes, Eſtate and Eſtates, as the ſaid *W. Fowler* ſhould by any Deed or Writing under his Hand and Seal, atteſted by two or more credible Witneſſes, limit and appoint. This Releaſe was atteſted by two Witneſſes only.

Settlement of Lord *Fauconberge* in Conſideration of his Wife's Eſtate.

The ſaid Mr. Fowler died without Iſſue: The Truſtees in the Deed of 1715 kept up the ſaid Deed during their Lives; but after the Death of the Survivor of them, it being found amongſt his Papers, it was laid before Mr. Piggot, viz. in the Year 1724, for his Advice concerning the Operation of it; and Mr. Piggot directed an Aſſignment of the legal Eſtate, to be made by the Heir of the ſurviving Truſtee in the Deed of 1715, to the Truſtees in the Deed of 1712; afterwards, viz. in the Year 1726, a Propoſal for a Marriage being ſet on Foot between the Lord and Lady Fauconberge, Mr. Piggot was Counſel for the Lord Fauconberge, and a Marriage-Settlement was executed, to which the ſurviving Truſtee in the Deed 1712 was a Party, whereby the Lord Fauconberge, in Conſideration of the great Eſtate in Land his intended Wife was intitled to, ſettled ſome Lands on the Iſſue of that Marriage, and a Jointure on the Lady, with a Power of Revocation, with the Conſent of the Truſtees, except as to the Lady's Jointure.

Plea, that my Lord was a Purchaſer.

The Lord and Lady Fauconberge, having put in a Plea to the Plaintiff's Bill, that my Lord was a Purchaſer under the Deed of 1712, without Notice of the Deed of 1715, he was ruled to anſwer, but the Benefit of the ſaid Plea was ſaved till the Hearing of the Cauſe, and therefore now three Queſtions were made.

1. Concerning the Matter of the ſaid Plea.
2. Whether the Deed of 1712 be revoked by the Deed of 1715.
3. Whether, admitting it to be a Revocation, yet it ſhall extend beyond the Purpoſes of the ſaid Deed, viz. the Payment of Mr. Fowler's Debts.

For the Plaintiff, Lord *Fauconberge* not a Purchaſer.

And it was argued for the Plaintiffs, That my Lord Fauconberge was not a Purchaſer, to be intitled to the Protection of this Court; for as he claims under no actual Conveyance, he can be a Purchaſer of no other Eſtate but that which his Lady had: This is a joint Plea of my Lord and Lady, and how can her Caſe be bettered by the Marriage? And therefore, if the Deed of 1712 be revoked in Law by the Deed of 1715, the Truſtees can be ſeiſed of no more than a Moiety of this Eſtate, for the Uſe of my Lord Fauconberge; and of the other Moiety they are Truſtees for the Plaintiffs, who therefore have the ſame Equity with the Defendants.

That the firſt Deed is revoked, and my Lord intitled only to a Moiety of this Eſtate.

2. That the Deed of 1712 is revoked by that of 1715, tho' atteſted by two Witneſſes only; this Queſtion will depend upon the Conſtruction of the Deed of 1712. That Powers of Revocation are favoured as Part of the antient Eſtate, ſo that the Intention of the Party is to govern the Conſtruction; here Mr. Fowler hath expreſſed the cleareſt Intention to have an abſolute Power over this Eſtate; the Preamble to the Deed of 1712 is full to that Purpoſe; it is a general ſubſtantive Power, without Reference to any other Clauſe in the Deed; but tho' this general Clauſe ſhould be taken

to be corrected by the ſpecial Power contained in the Body of the Deed, yet the Deed of 1715 is well executed within one of theſe Powers; for it is obſervable, that the Proviſo is branched out into different Powers.

General and ſpecial Power of Revocation.

1. Mr. Fowler has thereby reſerved to himſelf a general Power of Alienation, viz. by the Words, To grant, ſell, or demiſe; and the following Part, or by any, &c. provides an expreſs Power of Revocation, in the Execution of which laſt he ſubmitted to be tied down to the Ceremony of three Witneſſes; but the firſt Power to alien is without any Reſtriction: Now it is very natural to reſerve theſe different Powers; for as on the one Hand Mr. Fowler intended to have an abſolute Power of Alienation, without Reference to this Deed; ſo on the other he provides, that, in Caſe he ſhould be diſpoſed to execute a formal Revocation, he ſhould purſue the particular Power; beſides, theſe Powers ſerve to different Ends: By the firſt Power Mr. Fowler could not be re-inſtated in his former Eſtate, nor could he have given his Eſtate away by Will; both which Caſes are ſupplied by the ſecond Branch of the Proviſo.

The Interlineation was made an Argument to prove a larger Power than he would have had without it.

Total Revocation of the Deed, and why. New reſulting Truſt defeats all the old Uſes.

3. That the Deed of 1715 is a total Revocation of the Deed of 1712, for after the Debts paid, the Truſtees are to reconvey the Eſtate to Mr. Fowler, or to whom he ſhould appoint; and till that is done, there is a reſulting Truſt to him in Fee, as a Feoffment to the Uſe of ſuch Perſons and ſuch Eſtates as one ſhall appoint by his Will; till then the Uſe reſults to the Feoffor in Fee; upon this Head was cited the Earl of Lincoln's Caſe, Sho. Parl. Ca. 154. and that of Hubern and Pollen; where Sir J. H. having deviſed his Eſtate to his Grandſon, conveyed the ſaid Eſtate to the Uſe of himſelf for Life, and after in Truſt for ſuch Uſes as he ſhould appoint; and for Default of ſuch Appointment, in Truſt for him and his Heirs; by which the Will was held to be revoked. In the preſent Caſe therefore, the new reſulting Truſt defeats all the old Uſes: It was proved in the Cauſe, that one of the Truſtees in the Deed of 1715 had ſaid, that Mr. Fowler did not intend that Deed as a Revocation of the former Settlement, but to ſcreen his ſaid Eſtate, he being a Roman Catholick, and liable to Suſpicions upon Account of the Rebellion of the precedent Year: But the Plaintiff's Counſel inſiſted, that a parol Evidence could in

no Caſe influence the legal Operation of a Deed, much leſs a ſubſequent Declaration from the Mouth of a Truſtee.

For the Defendant. The Settlement was a valuable Conſideration for the Eſtate.

For the Defendants it was argued, 1. That the Settlement made upon the Intermarriage of my Lord and Lady Fauconberge was a valuable Conſideration for my Lady's Eſtate; that the ſaid Settlement was made in Contemplation of the Settlement of 1712, for the ſurviving Truſtee in that Deed was a Party; and it can make no Difference, that the Purchaſe was not of the legal Eſtate, but of the Truſt, 2 Vern. 599. Wilker and Boddington; nor will it differ the Caſe, that there was no actual Conveyance; for as the Truſtees in the Deed of 1712 had always acted under that Deed, the Truſt of that Deed ſhall ſubſiſt as to my Lord Fauconberge, who is a fair Purchaſer, and who without that Proſpect would not have ſettled ſo conſiderable an Eſtate upon my Lady and her Iſſue; and therefore this Court will preſerve that Truſt for him, and will not leave the Truſtees at Liberty to ſay, that it is determined: The Caſe of Stanhope and Thacker, which was determined by my Lord Cowper in the Year 1716 is as ſtrong a Caſe; for there a Settlement was made by the Husband, in Conſideration of a Security which the Wife had for 3000l. and it was held, that it ſhould go to the Husband's Executors, the Wife having ſurvived him; tho' it was objected, as here, that no Aſſignment was made of it to him, either before or after the Marriage; and therefore in the preſent Caſe, my Lord Fauconberge is to be conſidered as a Purchaſer of this Eſtate from Mr. Fowler, not from his Lady; as it was held in the Lord Coventry's Caſe, heard by my Lord Macclesfield aſſiſted by the Judges, which was to this Effect: My Lord Coventry was Tenant for Life, with a Power to make a Jointure, and having made ſome Steps towards an Execution of the ſaid Power, but being prevented by Death, my Lady Coventry had a Decree for her Jointure againſt the Remainder-Man, upon this Foundation, that ſhe was a Purchaſer, not from the Tenant for Life, but from him who created the Power. There is no Colour of Notice to my Lord Fauconberge of the Deed of 1715; for a Purchaſer ſhall not be affected by conſtructive Notice; and it muſt be intended that Mr. Piggot, at the Time he was concerned for my Lord, had forgot that he had ever ſeen this Deed, for an Interval of two Years had paſſed between his firſt ſeeing this Deed and his being

And the Lord *Fauconberge* a fair Purchaſer;

Without Notice of the later Deed.

being Counſel for my Lord Fauconberge: And for theſe Reaſons the whole Court held, that this could not be Notice to my Lord Fauconberge.

Power of Revocation not purſued in Circumſtances.

To the ſecond Point; That within the Power the Revocation muſt be attended with three Witneſſes, and that the Omiſſion of that Circumſtance was fatal: There is no Colour, that the Preamble is a ſubſtantive Power, for that muſt ſtand explained by the expreſs Power reſerved in the Body of the Deed; and therefore this Queſtion muſt depend upon the Conſtruction of that Power. Now to conſtrue this Clauſe in the Senſe contended by the other Side, will be attended with theſe Abſurdities. 1. That the Party could have meant to tie himſelf down to the Ceremony of two Witneſſes in the making of ordinary Leaſes for Years for Rent reſerved, (as Mr. Fowler has done by the expreſs Power reſerved for that Purpoſe) and yet to be at Liberty to diſpoſe of the whole Fee without any Ceremony at all. 2. To have firſt reſerved a general Power, and in the ſame Breath a ſpecial Power too; for this laſt, as it goes to the ſame, and with the former, is idle and uſeleſs. 3. That a Power of Revocation ſhould be ſuppoſed to be compleatly reſerved, before the Manner of Executing it is ſpecified; and we cannot ſtop at the Words, To grant, ſell, or demiſe, for the Senſe is imperfect, and therefore theſe Words muſt be carried over to thoſe that immediately follow, viz. or by any Deed, &c. for till then the Form of the Execution is not ſettled: Beſides, the Rule of Law is, that Words in the Middle or End of a Sentence are to be applied to every Part of it, by * 240. pl. 43. 255. pl. 4. 1 Saund. 58. Gainsford and Griffith. Winch 91. Trenchard and Hoskins.

How Words ought to be conſtrued.

[* An Authority omitted.]

The ſaying of the Truſtee was inſiſted upon to evidence the Deſign of this Deed of 17$\frac{10}{11}$ and to prove that ſuch a particular Deſign would prevent the legal Operation of the Deed, was cited the Caſe of Harvey and Harvey, 2 Chan. Ca. 180.

Revocation *pro tanto* only.

To the laſt Point; This Deed was compared to a Mortgage, which is always held in this Court to be only a Revocation pro tanto. That the Deed it ſelf ſpeaks the End it was made for, (viz.) the Payment of Debts, and the Diſpoſal of the remaining Part of the Eſtate was referred to a future Act; and no future Act being done, the Fee muſt remain ſubject to the old Truſts: In the Caſes cited, it appears to have been the Intention to make a total Revocation, for the Fee was appointed to be reconveyed. On the 12th of

June 1730 the Court delivered their Opinions, as follows:

Opinion of the *Lord Chief Baron.*

Lord Chief Baron Reynolds: The Plea is the firſt Matter to be conſidered; my Lady joins in it; but I cannot ſee how her Condition can be bettered by her Marriage.

1. Queſtion.

The firſt Objection to the Plea is, That no actual Conveyance is made to my Lord: In the ſtrict Notion of the Word my Lord is a Purchaſer, as it comprehends every Species of Acquiſition in Contradiſtinction to hereditary Deſcent, Litt ſect. 12. But what is he a Purchaſer of? He can be a Purchaſer of no more than my Lady had, as no actual Conveyance was made to him. Were that the Caſe, and that he had continued in Poſſeſſion with all the Marks of Ownerſhip, the Perſon who would impeach his Title muſt have taken his Remedy at Law: But ſure that Rule cannot hold in the preſent Caſe, where only the rightful Intereſt which my Lady had is tranſferred to him by Law, during the Coverture.

The Caſe of Wilker and Doddington proves, that it makes no Difference, whether the Party be a Purchaſer of the legal Eſtate, or only of an equitable Intereſt.

The Caſe of Stanhope and Thacker does not come up to our Caſe; for there was an actual Agreement previous to the Marriage, that the Huſband ſhould have the Portion.

2. Queſtion.

As to the ſecond Queſtion, All private Views which Mr. Fowler might have had at the Making of the Deed of 1715 are to be laid out of the Caſe, as the legal Operation of it is not to be controlled thereby. The Declaration by the Truſtee was after the ſaid Deed was executed, and not in the Preſence of Mr. Fowler; and therefore this Caſe is not to be ruled by that of Harvey and Harvey; for tho' generally no parol Evidence is to be admitted againſt a Deed, yet the Declaration there having been previous to the Deed, and the Deſign of it plainly appearing to be to protect the Eſtate from a Sequeſtration, that Reſolution is very right; but to admit parol Evidence without ſuch a Foundation, would be a very dangerous Precedent.

I can lay no Streſs upon the Circumſtance of the Interlineation inſiſted upon in Behalf of the Plaintiffs; for it does not appear when that was, nor that it was with the Direction of Mr. Fowler: And there-for it muſt be conſidered as an original Part of the Deed.

This Queſtion therefore muſt be diſcuſſed by the general undeniable Rules of Law upon this Head, which are;

1. That theſe Powers are to receive a favourable Conſtruction, as being Part of the antient Eſtate.

2. Deeds are ſo to be conſtrued, that all the Parts of them may conſiſt together.

3. That the Intention, as far as it may conſiſt with the Rules of Law, is to govern the Conſtruction. 1 Inſt. 314. b. 1 Vent. 280.

Now to the ſeveral Parts of the Deed; The Firſt is the Preamble, which I agree would amount to a general unlimited Power, if it had ſtood ſingle, without an expreſs Power reſerved in the Body of the Deed; but there being that expreſs Power, I think the Preamble muſt be taken as introductive and relative to it; it ſhews that Mr. Fowler intended not to be concluded by this Settlement, but to be at Liberty to defeat it in the Manner he has afterwards expreſly provided.

As to that expreſs Clauſe; The Defendants Counſel have cited Caſes to prove, that reſtrictive Words in the End of a Sentence are to be applied to the whole: But this Power muſt be conſtrued agreeable to Grammar and Syntax, which it would not be in the Senſe contended for; becauſe the Word Or, in its natural Signification, is a Diſjunctive, and to conſtrue it a Copulative, muſt ariſe from an abſolute Neceſſity, which is not in the preſent Caſe.

Where a Power of Revocation is reſerved, the Eſtates to be revoked may be defeated ſeveral Ways;

1. By a Conveyance to inconſiſtent Uſes.

2. By an expreſs Revocation.

3. By expreſs Revocation, and Limitation of the Eſtate, by the ſame Deed, to different Uſes.

Theſe ſeveral Ways are different in their Forms, and Mr. Fowler ſeems to have them all in View at the Time of this Deed executed; the firſt Part of the Power, viz. To grant, ſell, or demiſe, points out the firſt Manner of Revoking; the ſecond Part, viz. Or by any Deed or Writing, *&c.* refer to the ſecond Species of Revocation; and theſe Words, And to declare and limit the ſame, *&c.* relate to the third Form of Revocation: This is evidenced too by the Words of the Preamble; for the Words in the Proviſo, viz. To grant, ſell, or demiſe, tally with the Words, To diſpoſe of, change or alienate in the Preamble, and the Words, To revoke, repeal, *&c.* in the Proviſo, refer to the Words revoke, recal and make void in the Preamble; and therefore it ſeems to have been his Intention to have it in his Power to defeat this firſt Deed, without referring by ſuch Act of Defeaſance to it; and I am of Opinion that the Deed of 1715 has done this: The Power of leaſing is eaſily accounted for; for whilſt that Deed was to remain in Force, it was thought proper to be limited to certain Forms in the Creation of Intereſts deregatory to the Eſtates raiſed by it; but it is not at all unreaſonable to ſuppoſe, that when Mr. Fowler ſhould take it in is Head to annul that Deed, that he ſhould have reſerved an unlimited Power for that Purpoſe.

3. Queſtion.

The laſt Matter to be conſidered is the Extent of this Revocation: The Defendants Counſel have compared it to a Mortgage, which is looked upon in this Court only a Revocation pro tanto, and the Inſtances cited for that Purpoſe, 1 Vern. 97, 141, 182, 329, 342. are very right, for a Mortgage in Equity is only conſidered as a Pledge for the Money, but the Eſtate is not taken to be transferred to the Mortgagee. But here the legal Eſtate is intirely conveyed, and a new Truſt in Fee is raiſed; and there is no Foundation for this Court to abridge the legal Operation of that Deed: The preſent Caſe comes up to the Earl of Lincoln's Caſe, and to that of Hubern and Pollen cited; and therefore I think the Deed of 1715 is a total Revocation of the Deed of 1712, and that there ſhould be a Reconveyance of a Moiety to the Plaintiffs.

Opinion of the *Maſter of the Rolls.*

Maſter of the Rolls: As to the Plea; My Lord acquires only a matrimonial Right, and therefore he is a Purchaſer in the ſtrict legal Notion of that Word, as it ſtands in Oppoſition to Eſcheat and Deſcent.

But to be a Purchaſer in Notion of Equity there muſt be an actual Contract, and a Conſideration paid: And therefore, if at the Time of the Marriage the Deed of 1712 ſtood revoked, the Truſtees could be ſeiſed only of a Moiety for the Uſe of my Lady Fauconberge, and of no more conſequently can my Lord be a Purchaſer: This is the Subſtance of the Caſe, which he has laid before the Court by his Plea, and upon that Caſe the Court muſt judge that he never was a Purchaſer of the Moiety which deſcended to the Plaintiff's Wife in the Event of the ſecond Queſtion, viz. Whether the Deed of 1715 be a Revocation of the Deed of 1712.

2. Queſtion.

As to the Objection, that the Ceremony of three Witneſſes muſt run through the Whole; it muſt be conſidered, that this Deed contains ſome Proviſoes that reſtrain the preſent Lady Fauconberge to intermarry with a Proteſtant, from which there is Reaſon to infer, that this Deed was intended to be kept very private: for he muſt have known, that the Law would have condemned this Condition, and from this it is natural to think, that he intended to have a Power of defeating this Deed, without taking Notice that there ever was ſuch a Deed, (viz.) by granting, ſelling, or demiſing the Premiſſes: It is obſervable too, that the Proviſo tallies with the Preamble, and that in both he conſidered it a different Thing to alien the Premiſſes, from revoking the former Settlement. Granting and Revoking are the Membra dividentia of the Power; and the ſpecial Forms are only to be applied to the expreſs Act of Revocation; as to the Effect of the Preamble, I think that muſt ſtand explained by the expreſs Power reſerved in the operating Part of the Deed.

Theſe are the Objections made by the Defendant's Counſel:

1. That we cannot ſtop at the Words, grant, ſell, or demiſe.

2. That it is abſurd to ſuppoſe a limited and unlimited Power to be reſerved to defeat the ſame Deed.

I would obſerve, that it was long doubted, Whether a conſtructive Revocation was good? And though that Matter is now ſettled, 10 Co. 143, 144. 3 Keb. 572. yet it is not improbable that Mr. Fowler might be ignorant of it, and therefore might have judged it neceſſary to have expreſly reſerved ſuch a Power; and it is not uncommon for Parties to make expreſs Proviſions in Matters where the Law would have done as much. Vaugh. 126. Beſides, theſe different Powers will ſerve different Ends; for without the expreſs Power of Revocation he could not directly reſtore himſelf to his ancient Eſtate, tho' he might have aliened it; nor could he have given it by Will: For notwithſtanding the large Signification of the Word Grant, it can take in only Acts executed, and therefore it was neceſſary to go farther to be impowed to deviſe this Eſtate. As to the other Objection; the Intention of the Party muſt guide the Conſtruction. 1 Inſt. 146, 49. a. 1 Vent. 280. Now that Mr. Fowler's Intention was to have an abſolute Power over his Eſtate is evident from every Part of the Deed of 1712. He abounds every where with that Intention, ſo that this Proviſo muſt be conſtrued to give different Powers; the Word Or is, in the ordinary Signification of it, introductive of different Matter from what went before, and where the apparent Intention of the Party co-operates with it, it muſt neceſſarily have that Meaning.

I think the laſt Words of the Proviſo, viz. And that the ſaid *W. Fowler* ſhall and may diſpoſe of the ſame, *&c.* are very conſiderable; for this ſeems a diſtinct Branch of the Proviſo; and then the Words, And then and from thenceforth, *&c.* muſt refer to the laſt antecedent, viz. the expreſs Power of Revocation; which proves, that the firſt Part of the Proviſo was intended for a ſubſtantive independent Power: Several Diverſities have prevailed in the Conſtruction of theſe Powers; antiently they were held odious, as they tended to defeat the Grants.

The Diverſity between a perſonal Condition, neceſſary to be performed individually by him that reſerves it, and a Condition not inſeparably incident to the Perſon, 7 Co. 13. a. is equally applicable to Powers of Revocation, for they are in Nature of Conditions.

2. Between a Power to the Owner of the Eſtate, and a naked Power to a Stranger, to charge the Eſtate of a third Perſon.

3. Between a Power to the Owner of the Eſtate, and one to the Donee of a particular Eſtate which has its Riſe only from the Will of the Donor, and therefore muſt be taken ſtrictly in Favour of thoſe who are to come after him; but the Owner's Power is to have a liberal Conſtruction, as it is Part of his antient Eſtate. Hob. 312. But yet all the Circumſtances laid down and impoſed upon himſelf by the Party muſt be followed; and therefore the Opinion 2 Vent. 350. that this Court will diſpence with the Omiſſion of one Witneſs in the Execution of ſuch Power, is carrying it too far in my Apprehenſion, unleſs the Caſe be attended with ſome equitable Circumſtance, which may vary a general Rule; and I think it croſſes the Reſolution of Bath and Montague's Caſe: But tho' generally Equity will not aid the Want of an expreſs Circumſtance, yet where it will admit of a Latitude of Conſtruction, it ought not to be abridged; but this too muſt be underſtood with this Reſtriction, that it be in the Caſe of a voluntary Conveyance.

4. Between a Power limited in the Manner of the Execution, and in the Extent of it; in this laſt the Limitation is for the Benefit of thoſe that came after, and therefore to be taken ſtrictly. 6 Co. 33. a.

The Power now in Queſtion is intitled to all Favour, as it is a Power coupled with an Intereſt reſerved to the Owner, and limited neither in the Circumſtances, or the Extent of the Execution.

3. Queſtion.

As to the laſt Point; The only Caſe where Equity controls a Revocation is a Mortgage; and the Reaſon is, becauſe it is conſidered only as a Security for the Money lent: But here is a reſulting Truſt in Fee, for the Truſtees are to reconvey after the Debts paid; and the Law ſpeaks what the Eſtate reconveyed muſt be, viz. the Eſtate conveyed by Mr. Fowler, and that is a Fee-ſimple. 1 Inſt. 111.

*Lord Chancellor's* Opinion.

Lord Chancellor: The Plea does only lay my Lord's Marriage-Settlement before the Court; now beſides that there is no actual Conveyance, the Conſideration, viz. the Settlement made by my Lord is revocable by him in all its Parts, except my Lady's Jointure; the Plea therefore cannot ſtand in the Way of the Plaintiff's Right.

2. Queſtion.

As to the Revocation; Theſe Powers have been introduced ſince the Statute of Uſes; and tho' before that Statute they were reckoned odious, as tending to defeat the Party's own Grant; yet now the Rule is ſettled, that they are to be conſtrued favourably, and that the Party's Intention is principally to be regarded: Now that Mr. Fowler intended to retain an abſolute Power over this Eſtate is very evident; and therefore, if the Conſtruction of this Deed were but doubtful, ought not we to promote and give Effect to that Intention if poſſible?

But I do not think it in the leaſt ſo; for as by Law there are two Kinds of Revocation, viz. by a Conveyance to different Uſes, and by an expreſs Revocation; ſo Mr. Fowler has reſerved both, which is evident, as well from the Preamble, which is interwoven with the Conſideration of the Deed, as from the Proviſo: In both he has made a plain Diſtinction between theſe different Kinds of Revocation; and it is no Wonder he ſhould have reſerved to himſelf theſe different Powers, for by ſome unuſual Proviſoes contained in the Deed, it appears he intended to make uſe of it, or not, as Occaſion ſhould ſerve; and in Conſequence of that Intention, it is reaſonable to ſuppoſe he meant to have a Power to defeat it, without taking any Notice of it: If no Power had been reſerved in the Body of the Deed, then would the Preamble have given a general Power.

A Conveyance to different Uſes would have been a Revocation as effectual as an expreſs Revocation; but every Man is not a Lawyer; it anſwered his View to have an abſolute Power over this Eſtate: If the Words are not capable of this Conſtruction, it will vary the Caſe; but I think the other Conſtruction would be forced and unnatural.

If he had ſtopp'd with the firſt Words of the Proviſo, viz. To grant, ſell, or demiſe, he had reſerved an abſolute Power: Then come the Words, Or by any Deed or Writing; Or is plainly a Disjunctive introductive of a different Sentence, and a different Power, which is plain by the Words immediately after, (viz.) And then the Uſes ſo revoked and repealed, which refer to the expreſs Power of Revocation.

If the ſecond Part of the Clauſe, viz. Or by any Deed or Writing, *&c.* had been dropped, and it had ſtopped, or to repeal, *&c.* 'tis plain they would be diſtinct Powers; and why ſhould thoſe Words alter the Caſe? The Circumſtance of three Witneſſes is only applicable to the expreſs Revocation; but it neither goes to the firſt Power, nor to the general Power of Diſpoſing at the End of the Clauſe, viz. And that the ſaid *W. Fowler* ſhall and may, *&c.* which is as much a diſtinct Power as can be, and is larger than the firſt, for by this he might give his Eſtate by Will. It is objected, that in this Conſtruction the expreſs Power of Revocation would be nugatory; admitting it to be ſo, muſt a Man's general Intention be ſuperſeded, becauſe a ſubſequent Part of the Deed is Surpluſage? But I do not think it is nugatory; for within the firſt Power he could not be re-inſtated in his former Eſtate without a Conveyance and Reconveyance, nor could he have deviſed it: Whether the Interlineation was expreſly directed, or when ever that was, it muſt have been for ſome End; and that can be no other, than to give Mr. Fowler an unlimited Power.

3. Queſtion. That the whole legal Eſtate paſſed to the Truſtees by the Deed of 1715 is certain, and that nothing could have gone back to Mr. Fowler till a Reconveyance had; but then what becomes of the Truſt? why, it muſt certainly reſult to Mr. Fowler and his Heirs, till ſome Appointment made of it: It would have been ſo in the Caſe of an Uſe, according to Sir Edw. Cleere's

Caſe, 6 Co. 18. and the Rule of Equity is the ſame concerning a Truſt, that the Rule of Law is concerning an Uſe; therefore this muſt be a total Revocation; the Caſe of Hubern and Pollen, which was affirmed in the Houſe of Lords, is full to this Purpoſe: The Caſe of a Mortgage bears no Affinity to it. And thereupon my Lord decreed to the Plaintiffs a Moiety of this Eſtate, and an Account of the Moiety of the Rents and Profits ſince the Death of Mr. Fowler.

Decree for the Plaintiff.

This Decree was affirmed in the Houſe of Lords, on the 27th of *February* 1730-1.

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# Surrenders.

Defective Surrender, and Want of it, may be ſupplied in Equity.

A Defective Surrender of a Copyhold Eſtate, deviſed as a Proviſion for younger Children, Grandchildren, a Wife, or when deviſed for Payment of Debts, hath been ſupplied in Equity: So hath the Want of a Surrender, when grounded upon a long Poſſeſſion and Enjoyment, in which Caſe a Surrender will be preſumed; And the Surrender might be loſt or miſlaid, without the Default or Negligence of the Party; being kept by the Lord and his Steward, who are oftentimes changed, and not ſo careful as they ſhould be. 1 Ch. Rep. 108. 1 Vern. Rep. 132, 195. 2 Chan. Ca. 195. Lucas 497. 2 Williams 490. 1 Williams 61. See Eq. Ca. Abr. 122, 123, 124.

Though the Court will in all Caſes ſupply a Surrender for Payment of Debts, yet not for a Wife againſt an Heir at Law, who would be diſinherited thereby, or for younger Children againſt an Elder, to make them in a better Condition than the Elder. Eq. Abr. 124.

Equity will ſupply the Want of a Surrender, as well for an elder Son as a younger, in Caſe of Gavelkind Copyhold. 2 Vern. 163.

Surrender not ſupplied for a natural Daughter.

But where a Man ſeiſed of Lands, which by the Cuſtom of the Manor could only paſs by Deed, Surrender and Admittance, and having a natural Daughter does by Deed, in Conſideration of 300 l. therein mentioned to be paid by the Daughter, grant and convey thoſe Lands to her and her Heirs; and ſhe is admitted, but no Surrender is made; and at the Foot of the Admittance there is a Proviſo, that her reputed Father ſhould hold thoſe Lands for his Life, and in the Deed a Covenant for farther Aſſurance: It was held, that Equity could not ſupply this Surrender in Favour of a natural Daughter; that though her Father might be obliged by the Law of Nature to provide for her, yet here ſhe was to be conſidered as a mere Stranger to him; that though the Father might have a great Affection for her, yet that was no ſuch Affection as would raiſe a Uſe at Law; that the Covenant for farther Aſſurance being only auxiliary and depending on the original Conveyance, if that were void, the Covenant muſt be void or repugnant; and decreed accordingly. Eq. Abr. 123. Preced. in Chan. 475.

Surrender not ſupplied for Legatees.

A Man ſeiſed of Freehold and Copyhold Land deviſes both for Payment of Debts and Legacies, but the Copyhold was not ſurrendered to the Uſe of his Will, and the Freehold was ſufficient for the Debts; and the Queſtion was, whether the Court would ſupply the Want of the Surrender, and lay the Legacies on the Freehold, and the Debts on the Copyhold, as when there are Simple Contract Creditors, and Bond or Judgment Creditors, and perſonal Aſſets not ſufficient to pay both; and it was held, that the Surrender could not be ſupplied for the Sake of Legatees, eſpecially when they are mere Strangers, as here. Eq. Abr. 124.

Where Copyhold ſhall paſs without a Surrender.

One deviſes all his real Eſtate for the Payment of Debts, and was ſeiſed of ſeveral Freehold and Copyhold Lands, but had not ſurrendered his Copyhold Lands to the Uſe of his Will, and died, leaving three Sons; and Part of the Copyhold Lands was of the Nature of Borough-Engliſh. Lord Chancellor ſaid, if the Copyhold paſſes, the youngeſt Son, who is intitled to ſuch Part thereof as is Borough-Engliſh, muſt contribute to pay the Debts. That as between the Sons it was a doubtful Caſe; but with Regard to the Creditors, if there was not an Eſtate ſufficient for the Payment of Debts without the Copyhold Lands, it was his Opinion theſe ought to paſs. 1 Williams 443.

Surrender ſupplied for a Purchaſer.

If A. contracts with B. for the Purchaſe of a Copyhold Eſtate, and pays the Purchaſe Money, and B. agrees to ſurrender the Premiſſes at the next Court, but dies before the next Court or any Surrender made; Equity

Equity will ſupply the Want of it. 2 Chan. Rep. 218.

So for a Mortgagee.

So where A. ſurrenders a Copyhold by Way of Sale or Mortgage, but the Surrender is not preſented in Time, and A. becomes a Bankrupt; the Surrender ſhall be ſupplied againſt the Aſſignees. 1 Williams 280. 2 Vern. 564; 609.

Surrender decreed to be made in Purſuance of a Bond given for that Purpoſe.

A. ſeiſed of a Copyhold Eſtate, attempts to ſurrender it to the Uſe of his Will, with a Reſolution to deviſe it to B. his Siſter's Son; but a Surrender not being practicable, by Reaſon of ſome Accidents, he prevails with his Siſter, who was his Heir at Law, to give a Bond to her Son, conditioned to ſurrender at his Requeſt upon Payment of 200 l. A. dies, B. receives the Rents and Profits ſome Time, and then dies Inteſtate, leaving only two Siſters. The Mother adminiſters, and having procured herſelf to be admitted Tenant of the Copyhold, deviſes it by Will to one of her Daughters and Siſter of B. The other Siſter of B. brings her Bill againſt the Deviſee for a ſpecifick Performance of the Condition of the Bond, by which ſhe would be intitled to a Moiety of the Land. And it was decreed, that the Mother ſhould be conſidered as a Truſtee for B. and that a Surrender and Conveyance ſhould be made accordingly, upon the Payment of 200 l. with Intereſt from the Death of A. Lucas 525. Mod. Ca. in Law and Eq. 62. S. C.

How Surrenders muſt be governed.

Surrenders of Copyhold Lands muſt be governed by the ſame Rules as Conveyances at Common Law. 1 Williams 16.

Surrender will bar an Intail of Copyhold Lands.

Where there is no particular Method in the Lord's Court, or Cuſtom within the Manor, for the Suffering a Recovery of Copyhold Lands for barring of an Intail, a general or common Surrender is ſufficient; tho' the Intail is of a Copyhold Truſt or legal Eſtate. 2 Vern. Rep. 585, 705.

# Truſts and Truſtees.

## *See* Fines, Recoveries, Uſes.

Truſt a Creature of the Chancery.

A Truſt is the proper Subject of a Court of Equity; but a Breach of Truſt ought not to be decreed, unleſs where Recompence hath been made. 2 Chan. Ca. 64, 144.

What ſhall or ſhall not be a Breach of Truſt.

If a Truſtee joins with Ceſtui que Truſt in Tail in any Conveyance to bar the Intail, this is no Breach of Truſt; for it is no more than what he may be compelled to; tho' the Truſtee himſelf might have barred ſuch Intail without his joining, and that not only by Fine or Recovery, but likewiſe by Feoffment, Bargain and Sale, Deviſe or Surrender; (if the Intail be of a Copyhold, and there is no particular Cuſtom which requires a Common Recovery,) for ſuch Intail is not within the Statute De donis, but remains as at Common Law; and being a Truſt is governable only by the Rules of Equity, and not the Niceties of the Law. Vide 1 Chan. Ca. 47, 213. 1 Chan. Rep. 68. 2 Chan. Ca. 78, 64. 1 Vern. 13, 440. 2 Vent. 350. 2 Vern. 133, 583, 702.

If Truſtees in a Settlement, to ſupport contingent Remainders, join with the Tenant for Life in any Conveyance to deſtroy the contingent Remainders before they come in eſſe; this is a Breach of Truſt, and whoever claims under ſuch Conveyance, having Notice of the Truſt, or by a voluntary Settlement, ſhall be liable to make good the Eſtates. 2 Salk. 680. 1 Williams 128. See 2 Williams 610, 613.

But where upon a Marriage Lands were limited in Truſt for the intended Huſband for 99 Years, if he ſhould ſo long live, Remainder to Truſtees during his Life, to ſupport contingent Remainders, Remainder to the firſt, &c. Son of that Marriage, Remainder to the Heirs of the Body of the Huſband, Remainder to the right Heirs of the Huſband after the Marriage. Huſband and Wife and Truſtees, by Fine and other Conveyance, ſettle theſe Lands on the Huſband for 99 Years, if he ſhould ſo long live, Remainder to Truſtees during his Life, to ſupport, &c. Remainder to the Wife for Life for her Jointure, Remainder to the firſt, &c. Son of that Marriage, Remainders over. The Huſband and Wife died without Iſſue, and the Plaintiff, being Heir at Law to the Huſband, brought his Bill to ſet aſide this ſecond Conveyance by the Truſtees, as being made in Breach of their Truſt; and inſiſted, that they were Truſtees as well for the Support of this Remainder, as of the Remainder to the firſt and other Sons; all being contingent Remainders; and that ſuch Conveyances ought to be ſet aſide, as has been the Practice, or at leaſt the Opinion of the Court theſe twenty Years paſt. My Lord Chancellor held it to be ſo as to the firſt and other Sons who came in, and were to be conſidered as Purchaſers under the Marriage Settlement and Portion; and ſaid it would be dangerous for any Truſtees to make the Experiment, for that it was moſt certainly a Breach of Truſt; and if it ſhould ever come in Queſtion, he thought this Court would ſet aſide ſuch a Conveyance; not but that, he ſaid, the Caſe might be ſo circumſtanced, as that this Court would not relieve againſt it: But where Relief is to be given in ſuch Caſes, it is only to thoſe who come in and claim as Purchaſers, as the firſt and other Sons, but all the Remainders after the Heirs of the Body of the Huſband, Remainder to his right Heirs, are merely voluntary, and not to be * aided in this Court; and therefore diſmiſſed the Bill. Eq. Abr. 385. 1 Williams 359.

* *Vide* 1 *Lev.* 237. *Jenkins* and *Keymis*, which ſeems *contra*.

So if a Settlement is made on the Huſband for 99 Years, if he ſo long live, Remainder to Truſtees to preſerve contingent Remainders, Remainder to the Heirs of the Body of the Huſband by the Wife, Remainder to the Heirs of the Huſband; and there is Iſſue two Sons and a Daughter; and the Wife being dead, the Huſband and Truſtees join with the eldeſt Son in a Fine or Feoffment to J. S. this is a good Bar of the Truſt-Eſtate, and the Truſtees joining is no Breach of Truſt; for they were Truſtees purely for the Tenant in Tail, and to preſerve his Eſtate, and ought not to ſtand in Oppoſition to him for the Sake of thoſe who were to come after him; 2 Vern. 754. 1 Williams 387. S. C. Where it is ſaid, that the Truſtees ought not to join in deſtroying theſe Remainders,

mainders, which is acting the Reverſe of their Truſt; ſee 2 Williams 379.

Where Truſtees ſhall or ſhall not be decreed to join in ſuffering a Recovery.

J. S. by a Marriage Settlement was Tenant for 99 Years, if he ſo long lived, Remainder to Truſtees to ſupport contingent Remainders, Remainder to his firſt, &c. Son in Tail, Remainder to Truſtees for 500 Years, in Truſt to raiſe Portions for Daughters, if there is no Iſſue Male, or ſuch Iſſue Male died without Iſſue before twenty-one. J. S. had a Son, and being of Age and about to marry, he and his Father bring a Bill to have the Truſtees join in making an Eſtate in order to ſuffer a Recovery, that he might be enabled to make a Settlement upon his Marriage. There being a Daughter in this Caſe, Lord Harcourt directed, upon giving Security for the Daughter's Portion, that the Truſtees ſhould join in the Recovery. Eq. Abr. 386.

One after Marriage makes a voluntary Settlement of his Lands to himſelf for Life, Remainder to Truſtees to ſupport contingent Remainders, Remainder to his firſt, &c. Son in Tail, Remainder to himſelf in Fee; and contracting Debts, he afterwards makes a Conveyance to other Truſtees for Payment of theſe Debts. The Creditors bring a Bill and inſiſt, that the Truſtees for preſerving contingent Remainders ſhould join in the Sale to deſtroy the contingent Remainders; and the Maſter of the Rolls decreed they ſhould, upon their being indemnified, it being at the Suit of Creditors, and for raiſing Money for Payment of Debts. 1 Williams 358.

In a Marriage Settlement Huſband was made Tenant for 99 Years, if he ſo long lived, Remainder to Truſtees during his Life, Remainder to the firſt, &c. Son of that Marriage in Tail Male, Remainder to the firſt, &c. Son of any other Marriage, Remainder over; a Son is born and of Age; the Wife dead, and there are no other Sons by a ſecond Marriage; the Truſt for preſerving contingent Remainders deſcends to an Infant. The Father and Son bring a Bill againſt the Infant to join in a Recovery, for making a Settlement upon the Son's Marriage; and my Lord Chancellor decreed the ſame accordingly, it being for the Benefit of the Family. 1 Williams 536.

On Marriage Lands were limited to A. for 99 Years, if he ſo long lived, Remainder to Truſtees during the Life of A. to ſupport contingent Remainders, Remainder to the firſt, &c. Son of A. A. has two Sons C. and D. A. the Father mortgages the

Premiſſes, and he and his Son C. covenant to ſuffer a Recovery, and procure the ſurviving Truſtee to join therein; but the Truſtee refuſing to join, the Mortgagee brought his Bill to compel a Specifick Performance of the Covenant, and that the Truſtee might join in ſuffering the Recovery. The Truſtee, by his Anſwer, ſubmitted to do as the Court ſhould direct; but D. the younger Son (who was Defendant) not conſenting the Truſtee ſhould join, the Court would not decree it; but the Father, and C. the Son were decreed ſpecifically to perform their Covenant with the Plaintiff the Mortgagee. 2 Williams 379.

Where Bond Creditors ſhall come in upon a Truſt-term raiſed to pay Debts.

A. raiſes a Truſt-term to pay all his Debts equally, and dies indebted by Bond and Simple Contract; and though the Bond Creditors had been paid a good Part of their Debts out of A.'s perſonal Eſtate, yet Lord Chancellor held they might ſtill come in upon the Truſt-term for the Remainder, in Proportion with the Simple Contract Creditors. 1 Williams 228. His Lordſhip alſo declared, that by this Truſt-term the Simple Contract Debts became as Debts due by Mortgage, and ſhould carry Intereſt. Ibid. 229.

Lands given in Truſt to pay Debts deemed as Money.

Lands given in Truſt, or deviſed to pay Debts and Legacies, ſhall be deemed as Money, in reſpect to Creditors, but not in reſpect to the Heir at Law, or Reſiduary Legatee. Mod. Ca. in Law and Eq. 171.

Truſts for paying Debts and Legacies, and in what manner they are to be paid.

Lands are deviſed to be ſold for Payment of Debts and Legacies by Truſtees; it was decreed in Chancery, That the Creditors ſhould be paid before the Legacies, and the Legacies come into the Truſt after the Debts: But it being inſiſted, that the Precedents of the Court were otherwiſe; and that Legacies were in equal Degree with Debts, (except it were ſuch Debts as particularly charged the Lands) becauſe the Will of the Owner makes the Land liable, and gives no Preference to any: Thereupon the Lord Keeper gave Time to produce Precedents. 1 Chan. Ca. 248, 249.

Lands may be ſold to pay the Debts, the annual Profits not being ſufficient.

A Deviſe of Lands to Truſtees, on Truſt out of the Rents and Profits to pay Debts and Legacies; the Truſtees may ſell the Land it ſelf. Lingen's Caſe, 2 Chan. Ca. 205. * Where Truſtees are to pay Portions out of the Rents and Profits of an Eſtate, and the Portions are to be paid at a prefixt Day; in this Caſe, if the annual Profits will not do, the Truſtees have Power to ſell for that Purpoſe within the Intention of the Truſt. 1 Chan. Ca. 176. Vid. 1 Vern. 104, 256. 2 Vent. 357.

* 1 Vern. 104. 1 Williams 415.

Truſt-term created for raiſing Portions.

A Term was created for Daughters Portions to commence after the Death of the Father and Mother, upon Truſt, that the Truſtees ſhould from and after the Commencement of the Term raiſe the Portions. The Father dies, leaving a Daughter; and it was decreed, that the Portion was veſted, but not raiſable during the Life of the Mother. 1 Williams 448. See 2 Williams 484.

When the Portions ſhall be raiſed and paid.

But where the Truſt of a Term was created to raiſe Portions for Daughters by Sale or Mortgages, or by Rents, Iſſues and Profits to be paid at the Daughters Ages of 21, or Marriage, if after 14, or under, if with the Conſent of the Mother; and there is Iſſue four Daughters; and the Eldeſt, after her Age of 14, marries the Plaintiff, who brings his Bill for raiſing her Portion in the Life-time of the Father; the Court decreed a Sale or Mortgage of the Reverſionary Term for the Raiſing thereof. 1 Williams 707. But Note, the Reporter ſays this was decreed animo reluctante.

A Term is created for the raiſing Daughters Portions in Failure of Iſſue Male, as ſoon as conveniently might be after the Father's Death: But there is no Maintenance, nor any expreſs Time mentioned when the Portions ſhould be paid. There are three Daughters, and the Eldeſt but four Years old. The Father is dead, but the Mother, who has a Jointure on the Eſtate, is living. The Court will not raiſe the Portions for Daughters ſo young out of the Reverſionary Term. 2 Williams 591. See Ibid. 93.

When the Portions to be raiſed by Sale, Mortgage, or out of the annual Profits.

If in a Truſt-term for raiſing Daughters Portions, a particular Method for raiſing them is directed, this implies a Negative, that they ſhall not be raiſed any other Way; as where it is to raiſe the Portions out of Rents, Iſſues and Profits, as well by leaſing for three Lives, or 21 Years, at the old Rent; for in that Caſe it extends only to raiſe the Portions by annual Profits, or by leaſing, and not by Mortgage or Sale; and if the Truſtee mortgages for the Portions, the Mortgage is void, when the Portions might have been raiſed by the Profits. 2 Williams 14.

But where a Truſt-term was raiſed for ſecuring a Maintenance and Portions for Daughters, the Portions to be raiſed by Sale, Mortgage or Profits, and the Maintenance to be raiſed by Rents and Profits; Lord Chancellor ſaid it was againſt his Opinion to raiſe a Portion or Maintenance by ſelling a Reverſionary Term, and this under the Colour of the Word (Profits); but that it had been ruled before his Time, that

Profits ſhould extend to any Advantage which ſhould be made of the Land by Sale or Mortgage, as well as Rents, eſpecially in Caſes of Neceſſity, and when the Daughter has had no other Maintenance, it had been decreed to be raiſed by a Mortgage of a Reverſionary Intereſt of a Term: But that the preſent Caſe was much ſtronger; for here the Truſt-term for raiſing this Maintenance and Portions was come into Poſſeſſion; ſo that the Maintenance Money might be raiſed out of the annual Profits, which was like a Rent granted out of a Reverſion to commence preſently; in which Caſe, though the Reverſion does not fall into Poſſeſſion until many Years after, yet when it does fall, it ſhall anſwer all the Arrears: So that his Lordſhip decreed the Arrears of the Maintenance Money from the Time the ſame became payable by the Settlement, to be raiſed out of this Term. 2 Will. 180.

The Surplus after Debts, &c. are paid, goes to the Heir, and not deem'd perſonal Eſtate, tho' given as ſuch.

Land was given by Will to Truſtees and their Heirs, in Truſt to ſell, and thereout to pay the ſeveral Legacies therein mentioned, and amongſt the reſt a Legacy of One hundred Pounds to the Heir at Law; but no Diſpoſition made by the Teſtator of the Surplus of his Eſtate: Per Cur': The Land ſhall not be turned into perſonal Eſtate, nor more ſold than is neceſſary for the Payment of the Legacies, and the Heir ſhall have the Surplus. A Deviſe was of real Eſtate to Executors to be ſold for paying Debts, and the Surplus, if any, to be deemed perſonal Eſtate, and go to the Executors: Decreed the Surplus a Truſt for the Heir. And a Term for five hundred Years, in Truſt to pay Debts; as ſoon as Debts paid, a Truſt for the Heir. 2 Vern. Rep. 425, 645. See Mod. Ca. in Law and Eq. 122. Eq. Ca. Abr. 272, 273.

What ſhall be a Truſt.

If there are three Leſſees of a Church Leaſe, and one of them ſurrenders the old Leaſe, and takes a new Leaſe in his own Name, it ſhall be a Truſt for all. 1 Vern. 176.

What ſhall be a Reſulting Truſt.

A.'s Father granted the next Avoidance of a Church to B. the Defendant's Father, who was a Clergyman, and a Perſon much intruſted and employed by him, and the Grantee knew nothing of the making of the Grant; and being examined in a Cauſe, had depoſed that he did not purchaſe it: And it was held, that this was a Reſulting Truſt to the Grantor, there being no other Truſt declared. Eq. Abr. 381.

What ſhall be no Truſt for the Father, but Act of Advancement for the Son.

A Father purchaſed Lands in the Name of his eldeſt Son, an Infant, paid the Purchaſe Money, and laid out 400 l. in Improvements, and enjoyed during Life, having by Will deviſed the ſame to his Wife for Life, and after her Death to his younger Children: The Lord Chancellor ſaid, that the eldeſt Son and Heir being but an Infant at the Time of the Purchaſe, though the Father enjoy'd during his Life, it was an Act of Advancement for the Son, and not a Truſt for the Father. 2 Vern. 19. 1 Williams 111. Eq. Abr. 381, 382. 1 Chan. Ca. 296, 27. 2 Chan. Ca. 31.

**A private Truſt, not declared in Writing, decreed good in Equity.**

Where a Man had made a Will, and his Wife Executrix, the Son prevailed on his Mother to get the Father to make a new Will, and name him Executor therein, he promiſing to be only a Truſtee for his Mother: The Father made a new Will, and this Truſt was decreed in Equity, though it was not declared in Writing, as the Statute of Frauds requires, and the Son was ordered to be examined on Interrogatories for Diſcovery of the Eſtate. Thynn *v.* Thynn. 1 Vern. Rep. 296, 297.

So if A. in Conſideration of 80 l. conveys an Eſtate abſolutely to B. and afterwards A. brings a Bill to redeem, and B. by Anſwer inſiſts that the Conveyance was abſolute, but confeſſes that, after the 80 l. paid with Intereſt, it was to be in Truſt for the Wife and Children of A. and A. replies to the Anſwer: Though there be no other Proof of the Truſt, yet it will be decreed for the Wife and Children. 2 Vern. 288-9.

**Bond given by Truſtee to convey as *Ceſtui que Truſt* ſhould direct; Truſtee decreed to convey to the Executor.**

A. buys an Eſtate in the Name of a Truſtee, who gives Bond in 200 l. Penalty to aſſign the Eſtate as A. the Ceſtui que Truſt, or his Executor ſhall direct. A. dies, and his Executor brings Debt on the Bond againſt the Truſtee and recovered Judgment, and the 200 l. paid him; but afterwards brings a Bill for a Conveyance. It was decreed the Truſtee ſhould convey to the Plaintiff, and to account for the Profits; but in that Account the 200 l. and Intereſt was to be deducted, and the Truſtee to have an Allowance for the ſame. 2 Williams 315.

**When a Purchaſe by an Executor in Truſt, with the Aſſets, ſhall or ſhall not be liable.**

If a Receiver of Rents, or Executor in Truſt, lays out the Rents or the Aſſets in a Purchaſe of Lands in Fee, and dies inſolvent, the Purchaſe will not be liable; but if ſuch Receiver, or Executor in Truſt, does by Writing own that this Purchaſe was made with the Truſt-Money, the ſame is a Declaration of Truſt ſufficient to bind the Eſtate. 2 Williams 415.

**Truſtees chargeable for their own Receipts only, and not of others.**

Two Truſtees for Sale of an Eſtate join in a Conveyance of it to a Purchaſer, and in a Receipt for the Conſideration Money; but each of them received only a Moiety thereof: One of them afterwards becomes

Inſolvent, the other ſhall not be anſwerable for what the inſolvent Truſtee received, but for his own Receipts only; but if they had ſo joined in receiving the Money, as not to have been diſtinguiſhed, what had been received by the one, and what by the other, there they muſt have anſwered for each other. 2 Vern. Rep. 504, 515, 516. 1 Williams 81, 241. 1 Salk. 318. Cro. Car. 312.

A Truſtee where and when charged for what he might have made.

A very ſupine Negligence may in ſome Caſes charge a Truſtee with more than he receives, and what he might have made of a Thing; but then the Proof muſt be very ſtrong, and Truſtees ought not to be charged with imaginary Values. 1 Vern. 144. In the Caſe of Lee and Lee: Lord Keeper, Although a Truſtee, or Executor of a Will, is not directed to place Money out at Intereſt; yet if he makes Intereſt, he ſhall be accountable for it. 2 Vern. 548. Vide 1 Williams 141, 648.

Where he ſhall have the whole Benefit of what he gains to himſelf, and where not.

But afterwards a Difference was taken by my Lord Macclesfield, that if an Executor or Truſtee of Money places it out in the Funds, or on other Security, whereby he gains conſiderably, that he ſhall have the whole Benefit thereof to himſelf, in Reſpect of the Hazard he run of being a conſiderable Loſer thereby, which he muſt have born; but if ſuch Truſtee or Executor were an inſolvent Perſon at the Time of placing out ſuch Truſt-Money, there the Ceſtui que Truſt ſhall have the whole Benefit gained thereby, as he only could have born the Loſs thereof, if any had happened; the Truſtee or Executor, by Reaſon of his Inſolvency, being incapable thereof, and conſequently running no Hazard at all. Eq. Abr. 388.

Coſts and Charges allowed Truſtees, but nothing for their Pains.

Truſtees ſhall have their Coſts and Charges, and all juſt Allowances in managing the Truſt; but not any Thing for their Labour and Pains. (a) Truſtees have been decreed to account, and alſo to give Security to perform the Truſts, &c. One Truſtee hath been ordered to relinquiſh to another; and a Truſtee may be compelled in Chancery to accept or transfer the Truſt. Finch's Rep. 360, 362, 380.

(a) This hath been thought a great Hardſhip; but if they imploy a Bailiff, and give him a yearly Salary, that muſt be allowed. 1 *Vern. Rep.* 316.

# Uſes.

Uſe upon Uſe in Equity.

A Uſe will not riſe as a Uſe upon a Uſe at the Common Law, but it may be a Truſt in Equity. Quære 1 Chan. Ca. 114.

Gift for a Feme Covert a Truſt, and not a Uſe.

If Lands are limited by Will to A. in Truſt for a Feme Covert, and that A. ſhall receive the Rents, and pay and diſpoſe of them to the Feme, or to ſuch Perſons as ſhe ſhall direct and appoint, without the Intermeddling of her Husband, &c. This is a Truſt only, and not an Uſe executed by the * Statute. 1 Vern. Rep. 415.

What ſhall be a Uſe or Truſt executed by the Statute.

Lands were deviſed to Truſtees and their Heirs, in Truſt to pay ſeveral Legacies and Annuities, and to pay the Surplus of the Rents and Profits to a married Woman during her Life, for her ſeparate Uſe, or as ſhe ſhould direct, and after her Death the Truſtees to ſtand ſeiſed to the Uſe of the Heirs of her Body, with Remainders over; and the Queſtion was, whether this Deviſe to pay the Surplus of the Rents and Profits to the Wife, was ſuch a Uſe or Truſt as was executed by the 27 H. 8. And it was held by the Court, that ſhe had only a Truſt for Life, and conſequently the Heirs of her Body muſt take by Purchaſe; and the rather in this Caſe, becauſe it was limited to the Heirs of her Body ſeverally and ſucceſſively, as they ſhould be in Seniority of Age and Priority of Birth, and the Heirs of their reſpective Bodies iſſuing; and a Difference was taken between this Caſe and that of Broughton and Langley, 2 Salk. 679. 1 Lut. 823. S. C.

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* Notwithſtanding the Statute 27 *H.* 8. which unites the Uſe and Poſſeſſion, there are three Ways of creating a Uſe or Truſt, which ſtill remains as at Common Law, and is a Creature of the Courts of Equity, and ſubject only to their Control and Direction. 1*ſt*, Where a Man is ſeiſed in Fee, raiſes a Term for Years, and limits it in Truſt for *A.* *&c.* for this the Statute cannot execute, the Termor not being ſeiſed. 2*dly*, Where Lands are limited to the Uſe of *A.* in Truſt to permit B. to receive the Rents and Profits, for the Statute can only execute the firſt Uſe. 3*dly*, Where Lands are limited to Truſtees, to receive and pay over the Rents and Profits to ſuch and ſuch Perſons, for here the Lands muſt remain in them to anſwer theſe Purpoſes; and theſe Points were agreed to, *Trin.* 1700. between *Sympſon* and *Turner*, *per Curiam*. *Eq. Abr.* 383.

for there it was to permit A. to receive the Rents and Profits for Life, but here it is a Truſt in the Truſtees to pay over the Rents and Profits to ſuch and ſuch Perſons, and therefore the Eſtate muſt remain in them to anſwer theſe Truſts, otherwiſe ſhe muſt be the Truſtee, contrary to the expreſs Words of the Will. Eq. Abr. 383, 384.

No Difference between an expreſs and implied Declaration of a Uſe.

One ſeiſed in Fee as Heir of the Mother's Side levies a Fine, and declares the Uſe thereof to himſelf in Fee; this is the old Uſe, and there is no Diverſity between an expreſs Declaration of a Uſe and an implied one. 2 Williams 139.

If Money be generally given to a Pariſh, 'tis to Uſe of the Poor.

Money was given to a Pariſh generally, without ſaying to what Uſe; decreed to the Poor of the Pariſh, on the Miniſter, Church-wardens and Overſeers of the Poor exhibiting a Bill in Chancery, and ſuggeſting that the Teſtator intended it for the Benefit of the Poor. It was objected againſt this Decree, that the Deviſe was void; there being no Uſe limited touching the Legacy; whether it were for the Poor, or for the Repair of the Church or Highways, &c. 1 Chan. Ca. 134, 135. See Eq. Abr. 97, 98.

Deviſes to Charitable Uſes, not good at Law, held good in Equity.

The Deviſe of a Charity not good at Law, by reaſon of the miſnaming of the Deviſee, &c. hath been held a good Limitation in Equity, within the Statute of Charitable Uſes; which Statute ſupplies all Defect of Aſſurance, where the Donor is of Capacity to diſpoſe: And Legacies given to charitable Uſes are more favourably conſtrued than all others. Finch's Rep. 221. 1 Vern. 230. 2 Vern. 755. Eq. Abr. Tit. Charity.

Theſe Uſes are not to be alter'd or changed.

No Agreement of Pariſhioners, where there are Parochial Charities given to certain Uſes, can alter or divert them to other Uſes; for if they might change and apply the Charities as they thought fit, it would be a great Step towards deſtroying all Charities. A Corporation for a Charity are but Truſtees, and may improve the ſame, but cannot do any Thing to the Prejudice thereof; or in Breach of the Rules of the Founder. 1 Vern. Rep. 42, 44. 2 Vern. Rep. 412.

Leaſe of Lands let at Under-value, ſet aſide by Commiſſioners of Charitable Uſes.

Dr. Downham having given ſeveral Lands to charitable Uſes, for the Maintenance of a Maſter and Uſher of a Free-School, &c. and they being incorporated, in Conſideration of a ſmall Fine, and the Surrender of a former Leaſe, granted a long Term of Years in the Lands to W. R. at a great Under-value: This was found by Inquiſition, upon a Commiſſion of charitable Uſes; whereupon the Leaſe was ſet aſide; and the Leſſee decreed to deliver up the Poſſeſſion, and pay the Arrears of Rent according to the full Value. Ibid. 415.

No Appeal lies to the Houſe of Lords from Decrees of this Nature.

Pious Uſes are wholly ſubject to the Chancery. And no Appeal lies to the Houſe of Lords from a Sentence by the Delegates, or a Decree of the Lord Chancellor upon the Statute of charitable Uſes: Alſo the Decree on hearing Exceptions being once confirmed by the Chancellor, there can be no Rehearing, for that is final by the Act of Parliament. 2 Vern. 118. 2 Chan. Ca. 32.

Lands given to ſuperſtitious Uſes, and good Uſes.

In the Caſe of Combe, the Lord Chancellor declared, That a Leuctre is not within the Statute of 43 Eliz. of charitable Uſes, but that Statute took Pattern from 1 Ed. 6. c. 14. againſt ſuperſtitious Uſes; and here the Charity is miſtaken. But where a Gift was of 10 l. per Annum to maintain a ſuperſtitious Uſe, ſo long as the Law would allow it; when the Law did abrogate that Superſtition, it was turned to a good Uſe, and decreed to be, to maintain a Catechiſt there, to be approved of by the Biſhop. 2 Chan. Ca. 18. Eq. Abr. Tit. Charity.

What are ſuperſtitious Uſes by Statute.

Note; A Deviſe to ſuperſtitious Uſes is where 'tis to find a Prieſt to pray for the Souls of the Dead, &c. and the Lands or Goods ſo deviſed are forfeited to the King by the Statute 1 Edw. 6. But if Land is given to find an Obit, and for another good Uſe; if there is no Certainty how much ſhall be impploy'd to the ſuperſtitious Uſe, the Gift to the good Uſe ſhall preſerve the whole from Forfeiture. 2 Rol. 205. See 2 Vern. Rep. 266. Eq. Abr. Tit. Charity.

See more under this Head of Charitable and Superſtitious Uſes, Eq. Abr. Tit. Charity; and 1 & 2 Williams Rep.

See alſo the Statute 9 Geo. 2. which reſtrains and makes void the Diſpoſition of Lands or Sums of Money, &c. to be laid out in Lands to charitable Uſes, unleſs it be by Deed indented and executed before two Witneſſes twelve Months before the Death of the Donor, and inrolled. But this Act is not to extend to the two Univerſities, or the Colleges of Eaton, Wincheſter or Weſtminſter.

# Wills and Deviſes.

## *See* Conditions, Eſtates, Truſts.

Who may make a Will, and at what Age.

IT has been agreed in Equity, that a Female may make a Will at twelve Years of Age of perſonal Eſtate; and a Male at ſeventeen Years, or fifteen, if he be a Perſon of Diſcretion: And a Wife, whoſe Husband is baniſhed for Life, may make a Will as a Feme Sole. 2 Vern. 104, 469.

Wills how to be conſtrued in Equity.

In the Expoſition of Wills every Word ſhall have its Effect, and not be rejected if by any Conſtruction it can have its Effect. 2 Williams 288.

Contradictory Clauſes in a Will are to be ſo expounded, as that the whole may conſiſt. Mod. Ca. in Law and Eq. 154.

The Intention of the Teſtator, if it can poſſibly by the Rules of Law, ought to be ſupported, and the Judges have been commended for being aſtuti in doing this. Lucas 502.

The Law allows great Favour in the Conſtruction of a Will, ſuppoſing it to be made when a Man is inops concilii, and a great Latitude of Conſtruction is allowed in the Words of a Will to ſupport the Intention of the Teſtator. Lucas 410, 422.

It was ſaid by the Maſter of the Rolls, in the Caſe of Cowper verſus Lord Cowper, that there had been a Diverſity of Opinions among the learned Judges of the preſent Time, whether the legal Operation of Words in a Will, or the Intent of the Teſtator, ſhould govern. But that for his Part he ſhould always contend for the Intention, where it was plain, and thought the ſtrongeſt Authorities were on that Side; for that if the Intention was ſome Times to govern, as it was admitted it muſt, and not always give Way to the legal Conſtruction, and yet at other Times ſhall not govern, there would then be no Rule to judge by, nor would any Lawyer know how to adviſe his

Client; a Miſchief which his Honour ſaid Judges ought to prevent. 2 Williams 673.

**Will wrote blindly and hardly legible.**

Where a Will was wrote blindly and hardly legible, and the Legacies in Figures, the Court referred it to a Maſter, to examine what thoſe Legacies were, with Directions that he ſhould be aſſiſted by ſuch as underſtood the Art of Writing. 1 Williams 425. See Eq. Abr. 401, 402, 403.

**Gift by Will to be intended a Bounty.**

Whatever is given by a Will is prima facie to be intended a Bounty and Benevolence. 2 Williams 616.

A Will cannot operate as a Releaſe. 1 Williams 85. 2 Williams 132.

A Will is taken as at the Time of the Death of the Teſtator, for till then it is no Will; but though Wills ſpeak not 'till the Teſtator's Death, yet the Conſtruction of them is to be made as Matters ſtood at the Time of the making. 2 Vern. Rep. 653. 2 Chan. Ca. 50. 1 Williams 97. And Wills ſhall be conſtrued in Equity ſo far according to the Intention of the Makers, that Evidence may be admitted to explain a Teſtator's Intent, where the Words are doubtful. 1 Chan. Rep. 83, 250, 268. See 1 Williams 9, 116. 2 Williams 136, 210. Mod. Ca. in Law and Eq. 9, 11. Lucas 99, 100. Eq. Abr. 230, 231, 232.

**Evidence admitted to explain Teſtator's Intent.**

**Accidents relieved, where the Teſtator would have alter'd his Will, if foreſeen.**

In Caſes of Wills, the Lord Chancellor ſaid, that where the Law fixeth the Eſtate, Equity would not help; but if there falleth out an unforeſeen Accident, which if the Teſtator had foreſeen, he would have altered his Will, there Relief may be had. A. having only a Daughter, deviſed in his Sickneſs, that his Truſtees ſhould convey the Land to the Daughter in Fee; the Teſtator recovered, and after had a Son; the Daughter ſhall not carry the Land from the Son. 2 Chan. Ca. 16.

**Perſons that may take by Will, Children, Grand-Children, &c.**

A Perſon may take by Will, as well by a Deſcription, as by a Chriſtian or Surname; but it muſt be where 'tis evident, that he is the Perſon deſigned by the Teſtator to ſucceed to his Eſtate. And if a Deviſe of Lands be to a Woman, and the Heirs of her Body, who dies in the Life-time of the Teſtator, leaving Iſſue; the Deviſe is void, (a) and the Iſſue cannot take as Heir. 2 Vern. 722, 732. See 1 Williams 397, 399. But where a Deviſe is to A. for Life, Remainder to B. and A. dies in the Teſtator's Life-time, and then the Teſtator dies, B. ſhall take preſently. 2 Williams 331. Show. 91. Salk. 238.

(a) Becauſe the Mother ſo dying, the Eſtate was never in her.

If there be a Deviſe to A. a Proteſtant, for Life, Remainder to B. a Papiſt, for Life, Remainder to C. a Proteſtant; A. dies, B. being a Papiſt, is diſabled to take. C. ſhall take preſently. 2 Williams 362. If a Deviſe be of Money to the Child he ſhall have at his Death, and he afterwards hath three Children, the Deviſe is not void, but all three Children ſhall take in it: So if Money be given in Truſt for Children, if there be no Child living at the Death of the Teſtator, the Grand-Children, i.e. Children of Children, ſhall be intitled in Equity to the Money. 1 Chan. Ca. 304. 2 Vern. Rep. 107, 108. See Eq. Abr. 212, 213, 214.

If one deviſes the Surplus of his Eſtate to his Children and Grand-Children living at his Death, a Grand-Child in Ventre ſa mere at the Teſtator's Death ſhall take; Secus, had the Deviſe been to his Children and Grand-Children. 1 Williams 342.

Where one deviſes the Reſidue of his perſonal Eſtate to his Relations, without ſaying what Relations, it ſhall only go among all ſuch Relations as are capable of taking within the Statute of Diſtributions. 1 Williams 327. Vid. 2 Chan. Rep. 77. Preced. in Chan. 401.

Portions and Legacies given, when and to whom to be paid.

Where no Time is appointed for the Payment of Legacies given to Children for Portions, they ſhall be paid at their Age of Twenty-one Years, or Day of Marriage. Finch's Rep. 432. Eq. Abr. Tit. Legacies. 1 and 2 Williams. From the Time that a Legacy becomes due and payable by Will, Intereſt ſhall be paid: And if it be generally deviſed to one to be paid on a certain Day, and the Perſon to whom given dies before the Day comes, but after the Teſtator, there is ſuch an Intereſt veſted in the Legatee, that the Legacy ſhall go to his Adminiſtrator. Finch 113. Eq. Abr. Tit. Legacies. 1 and 2 Williams.

If a Child dies, after the Teſtator before the Day, the Adminiſtrator is intitled.

A Deviſe of a Legacy to a Child as a Portion, but not to be paid 'till ſhe attains the Age of Twenty-one, or is married; if ſhe dies under Age, or unmarried, the Adminiſtrator ſhall have it, but ſhall wait for it 'till ſuch Time as the Child, if ſhe had lived, would have come to Twenty-one: Otherwiſe, if it was to be paid with Intereſt, for then the Legacy ſhall be paid to the Adminiſtrator preſently. 1 Vern. 462. 2 Vern. Rep. 199, 673. Eq. Abr. Tit. Legacies.

Where the Legacy ſhall or ſhall not lapſe.

A. deviſes to B. 400l. which he owed A. provided he thereout pays ſeveral particular Sums to Children, the reſt he freely gives him, directing his Executors to deliver up the Securities, and not to claim any Part of the Debt, but to give ſuch Releaſe as B. his Executors, &c. ſhall require. B. dies in the Life of the Teſtator; and it was decreed that ſo much of the 400l. as was to remain to B. was a lapſed Legacy. 1 Williams 63. 2 Vern. 521.

A Will which deſigns to prevent the Lapſing of a Legacy by the Death of the Legatee in the Life of the Teſtator, ought to be ſpecially penn'd. 1 Williams 86.

A. deviſed the Reſidue of his perſonal Eſtate to ſix Perſons, to each of them a ſixth Part, and one of them dies in the Teſtator's Life-time: This ſixth Part was held to be a lapſed Legacy, and undiſpoſed of by the Will, and therefore to go according to the Statute of Diſtributions. 2 Williams 489. Secus, had it been a joint Deviſe, for then it would have gone to the ſurviving Legatees. Ibid.

One poſſeſſed of a perſonal Eſtate deviſes, if his Wife dies without Iſſue by him, that then 80l. ſhall be paid to his Brother; the Brother dies in the Life-time of the Wife, who afterwards dies without Iſſue. The Legacy was decreed to be paid to the Repreſentatives of the Brother. 1 Williams 563. 2 Vern. 758, 766.

Difference in Law between Legacy to a Daughter, to be paid at twenty-one, and if ſhe attain twenty-one.

In the Caſe of Lampen and Clowbery, Mich. 1683. the Difference in Law was allowed between a Deviſe of five hundred Pounds to one, to be paid (a) at her Age of twenty-one, or Marriage, and where it is deviſed, if or when ſhe comes to twenty-one. 2 Chan. Ca. 155. Tho' in Yate's Caſe, Hill. 1700. the Lord Keeper was of Opinion, that a Deviſe to J. S. of one thouſand Pounds to be paid at twenty-one, and a Deviſe to him at twenty-one was all one and the ſame in Equity; and ſaid that the Diſtinction taken by Swinborne and Godolphin, was without a Difference. 2 Vern. 417. But Note, that was in a Caſe wherein the Legacy was to ariſe out of the Real Eſtate, which ſhall ſink into the Inheritance for the Benefit of the Heir, as much as if it were a Portion provided by a Marriage Settlement, for which vid. Eq. Abr. Tit. Heir, and 2 Vern. 92, 617, 508. and 2 Vent. Paulet and Paulet. But when it was to be paid out of the perſonal Eſtate,

But all one in Equity.

(a) If the Deviſe be to be paid at her Age of twenty-one, then it is *Debitum in præſenti & ſolvendum in futuro,* and if ſhe die her Adminiſtrator, *&c.* ſhall have it: But it is otherwiſe if the Legacy be charged upon a Real Eſtate, 2 *Will.* 610. *Mod. Ca. in Law and Eq.* 106. or if the Deviſe be to her, when ſhe attains her Age of Twenty-one Years; for then if ſhe dies before that Age, the Legacy is laps'd and gone. 2 *Ventr.* 342. See 1 *Vern.* 324. *Eq. Abr.* Tit. *Legacies.*

the above Diſtinction has been allowed of: And my Lord Cowper ſaid, that though it was at firſt introduced upon very ſlender Reaſons, and probably from a Willingneſs in the Civil Law to ſtretch in Favour of a particular Legatee againſt a Reſiduary one; yet as Chancery has a concurrent Juriſdiction with the Spiritual Court in theſe Matters, he thought there ought to be a Conformity in their Reſolutions. Eq. Abr. 295.

Where a Portion is charged on the real Eſtate by Will, if Daughter dies, it ſinks in the Land.

One deviſed a Legacy to his Daughter for her Portion, charged by his Will upon the real Eſtate, and payable at her Age of twenty-one Years, or Marriage; and it was decreed, if ſhe died before, the Portion ſhould ſink in the Lands for the Benefit of the Heir: But if no Time were limited for the Payment of the Money, and it was a meer perſonal Legacy not to be raiſed out of Lands, in that Caſe it would go to the Executor or Adminiſtrator of the Daughter. 2 Vern. Rep. 92, 94.

Where Portions ſhall not lapſe.

A Man deviſes Portions to his Children A. B. and C. and directed that if any of them died before their Age of twenty-one, or Marriage, then the Portion of the Child ſo dying ſhould go to the Survivors; one of the Children died within Age, and before Marriage, in the Life-time of the Teſtator; and it was held that this was not a lapſed Legacy, but ſhould go over to the ſurviving Children. 1 Williams 274.

By a Marriage Settlement a Term for Years is created to raiſe 5000 l. for Daughters Portions, payable at their Ages of twenty-one, or Marriage, with a Proviſo that if any of the Daughters ſhould attain the Age of twenty-one, or Marriage, in the Life-time of the Father, then her Portion to be paid at the End of the Year after the Death of her Father; and alſo, That if any of the ſaid Daughters ſhould die before her Portion became payable, and before twenty-one or Marriage, her Share to go to the ſurviving Daughters. There was Iſſue one Son and three Daughters, the eldeſt of whom married, and received her Portion; the ſecond having attained twenty-one married in the Father's Life-time, and died before him without Iſſue, and her Huſband adminiſtred to her; after which the Father died, and the third Daughter ſurvived both her Siſters: The Queſtion was, Who ſhould be intitled to the middle Daughter's Share of the 5000 l. ſhe dying in her Father's Life-time; and it was reſolved that her Huſband, as Adminiſtrator to her, was intitled, ſhe having lived to twenty-one; ſo that the Right veſted in her, and the Payment was only ſuſpended till her Father's Death. 2 Williams 513.

Decree revers'd where obtain'd for the Adminiſtrator.

A. by Will deviſed 500 l. to a Daughter, to be paid her with Intereſt, when ſhe attained the Age of twenty-one, or ſhould be married, which ſhould firſt happen; ſhe died under Age, and unmarried, and her Adminiſtrator had a Decree for Principal and Intereſt: But the Lord Chancellor, on a Bill of Review, ſuſpended the Decree, and once pronounced a Reverſal of it. 2 Chan. Ca. 155. See ibid. 166.

When a Legacy given by Will muſt be waved, and when extinguiſh'd.

Where a Legacy was given by the Father to his Son, who was intitled to a Share of his Father's perſonal Eſtate by Marriage Articles; Decreed if he will have the Benefit of the Legacy and Will, he muſt wave and relinquiſh the Benefit of the Articles, and accept of the one in lieu of the other. And where a Perſon had given his Daughter a Legacy by Will, and afterwards gave with her in Marriage in his Life-time a greater Portion, it was held, that the Portion was an Extinguiſhment and in Satiſfaction of the Legacy. 2 Vern. 115, 556. See Eq. Abr. 203. 1 Williams 147.

Where a Legacy ſhall be a Satiſfaction for a Portion.

Where a Father is bound to give a Portion with his Child, and afterwards by his Will gives a Legacy to ſuch Child of as great or greater Value than the Portion; this is a Satiſfaction of the Portion. 1 Williams 299.

Where a Deviſe of Land is no Satiſfaction for a Marriage Bond.

But where one gives a Bond on his Marriage, either within four Months, to ſettle Lands of 100 l. per Ann. on his Wife; or that his Heirs, Executors, &c. ſhould pay her 2000 l. within four Months after his Death; and the Husband after this deviſes Lands of 88 l. a Year to his Wife in Fee; It was decreed, that this ſhould not be taken in Part of the 100 l. per Ann. but only a Benevolence. 2 Williams (614.)

Things of a different kind, one never taken in Satiſfaction of the other.

Money and Lands being Things of a different Kind, the one, though of greater Value, ſhall never be taken in Satiſfaction of the other, unleſs ſo expreſs'd. Ibid. (616.) See 1 Williams 423.

What ſhall be no Ademption of a Legacy.

A. deviſes to her Grand-child a Debt of 4000 l. owing to her from J. S. provided that, if all or part of the Debt ſhould be paid in before A.'s Death, then ſo much to be made good to the Grand-child out of the Surplus of Teſtatrix's Eſtate: Afterwards A. releaſes 2000 l. of the Debt to J. S. without having received any of the Money; and it was decreed that this was no Ademption of the Legacy pro tanto, but that the Legatee, or her Repreſentatives, were intitled to the

4 whole

whole 4000 l. as much as if the ſame had been paid to the Teſtatrix. 1 Williams 461. A Fortiori, if the Teſtatrix had called in the Debt, it would have been no Ademption. Ibid. 464.

A Man by his Will deviſes a Sum of Money due to him from a certain Perſon, and after the Teſtator lives to receive the Money, this is no Ademption of the Legacy, which was nevertheleſs decreed to be paid. Orme & Smith, 2 Vern. Rep. 681. Eq. Abr. 302. See 2 Will. 164, 330, and 469.

Lands given by Will to pay Debts, &c. deem'd Money; and Money to buy Lands, as Land.

It is a ſtanding Rule in Equity, that Lands deviſed by Will to pay Debts and Legacies, are to be deemed as Money in reſpect of Creditors; (but not in reſpect to the Heir at Law, or reſiduary Legatees) and Money deviſed to buy Lands, is to be deemed as Land, &c. And if upon Articles for a Purchaſe of Lands, the Purchaſer dieth, and deviſeth the Land before the Conveyance is executed, the Land paſſeth in Equity. 1 Chan. Ca. 14, 39. 1 Williams 127, 539.

If Money is covenanted to be laid out in Land, it ſhall deſcend as Land; but he that would be intitled to the Fee of the Land when purchaſed, may diſpoſe of it by Will, tho' not atteſted by three Witneſſes: Alſo a parol Direction for the Payment of it ſeems to be good. So if Money is ordered or deviſed to be laid out in Land, and ſettled to the Uſe of A. in Tail, Remainder to himſelf in Fee, Equity will order the Money to A. Secus, if the Remainder thereof be limited to a third Perſon. 2 Will. 171.

Where Mortgage Lands deviſ'd for Life, and the Remainder over to another, how Mortgage Money to be paid on Redemption.

C. having mortgaged Part of his Copyhold Lands in Fee unto one B. he ſurrenders the Lands to the Uſe of his Will, and deviſes them to his Wife for Life, Remainder in Fee to the Defendant D. and makes his Wife Executrix; and it was pray'd on his Behalf, That if the Plaintiff ſhould redeem, the Defendant D. might have a proportionable Share of the Redemption Money, according to the Value of the Eſtate he had in the Land: And the Matter of Fact appearing to be ſo upon the Pleadings; (a) it was ordered by the Lord Chancellor, that the Defendant ſhould have his proportionable Part of the Redemption Money: And the ordinary Rule of the Court in ſuch Caſe was ſaid to be, that one Third of the Money ſhould be paid to the Tenant for Life, and the two Thirds Reſidue to the Remainder-Man. Brent. v. Beſt & al. 1 Vern. Rep. 70.

Tenant for Life to have one Third, and the other two Thirds to the Remainder-man.

(a) Although the Defendant had no Croſs Bill, nor ſo much as inſiſted upon it in his Anſwer.

Deviſee for Life of mortgag'd Lands, to contribute a Third towards Diſcharge of the Mortgage.

So if one deviſes Lands which are in Mortgage to A. for Life, Remainder to B. in Fee, A. ſhall contribute one Third towards the Diſcharge of the Mortgage. 1 Chan. Ca. 271. Nel. Chan. Rep. 220. S. C. But if A. takes an Aſſignment of the Mortgage, and dies, his Executor ſhall be obliged only to contribute in Proportion to the Time that A. his Teſtator enjoyed it. 1 Vern. 404.

Where there ſhall be a Contribution between two Deviſees.

A. ſeiſed in Fee of the Manors of B. and C. mortgages B. for 4000 l. and by Will charges all his Real Eſtate with the Payment of his Debts, and deviſes B. to D. and C. to E. and dies, the Deviſee of B. ſhall compel the Deviſee of C. to contribute to pay the Mortgage on B. but if the Will proves void, then there can be no Contribution. 1 Williams 505.

Lands incumber'd with Debts, are deviſed to one for Life, with Remainder to others in Fee.

Lands were deviſed to J. H. the Defendant for Life; and after his Death one Third part of the Reverſion was given by the Teſtator to each of his three Siſters reſpectively, and her Heirs: The Land was incumbred with Debts; and the Bill was, to diſcover the Incumbrances upon the Eſtate, and compel the Defendant to bear his Share and Proportion thereof, complaining that he increaſed the Debts by Nonpayment of Intereſt, ſo that the Plaintiffs their Reverſion might in a little time become charged with as much as it was worth, and the Defendant go away with all the Profits during his Life, &c.

The Deviſees muſt pay proportionable Shares of Incumbrances.

The Court decreed the Defendant, the Deviſee for Life, to pay two Parts in five of the Debts, and the Plaintiffs the Reverſioners the other remaining three Fifths, and the Defendant to account for Timber cut, being but barely Tenant for Life, towards diſcharging the Incumbrances. 2 Vern. 267, 268.

One ſeiſed in Fee of ſome Lands, and poſſeſſed of a Leaſe for Years in other Lands, deviſes the Fee to A. and the Leaſe to B. and dies indebted by Specialty and Simple Contract; and there was a Deficiency of Aſſets to pay the Debts. My Lord Chancellor decreed, That both Deviſees ſhould contribute to the Debts by Specialty, in Proportion to the Value of their reſpective Premiſſes; but that as to the Debts by Simple Contract, if there ſhould not be enough over and above to pay them, they muſt fall upon the Leaſehold only. 1 Williams 404. 2 Vern. 756.

*The End of the Firſt Part.*